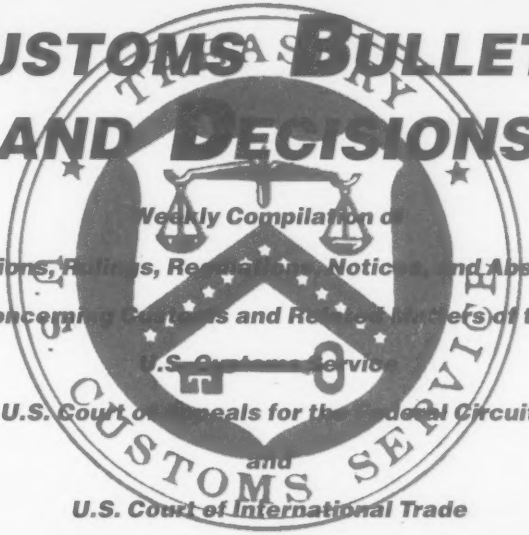
CUSTOMS BULLETIN AND DECISIONS



Weekly Compilation of
Decisions, Rulings, Regulations, Notices, and Abstracts
Concerning Customs and Related Matters of the
U.S. Customs Service
U.S. Court of Appeals for the Federal Circuit
and
U.S. Court of International Trade

VOL. 34 NOVEMBER 8, 2000 NO. 45

This issue contains:

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE

NOTICE

The decisions, rulings, regulations, notices and abstracts which are published in the CUSTOMS BULLETIN are subject to correction for typographical or other printing errors. Users may notify the U.S. Customs Service, Office of Finance, Logistics Division, National Support Services Center, Washington, DC 20229, of any such errors in order that corrections may be made before the bound volumes are published.

Please visit the U.S. Customs Web at:
http://www.customs.gov

For sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402

U.S. Customs Service

Treasury Decisions

[T.D. 00-63]

GUIDELINES FOR THE MITIGATION OF RECORDKEEPING PENALTIES

AGENCY: Customs Service, Treasury.

ACTION: Final guidelines.

SUMMARY: This document sets forth the final mitigation guidelines that Customs will follow in arriving at its assessment and disposition of liabilities when a party fails to comply with a lawful demand for the production of entry records resulting in a penalty being incurred under applicable law and regulations. These guidelines provide for a distinction between the treatment of persons certified as participants in Customs Recordkeeping Compliance Program and those who do not participate in the program.

EFFECTIVE DATE: These guidelines are immediately effective upon publication for all violations occurring on or after July 15, 1996.

FOR FURTHER INFORMATION CONTACT: Wende Schuster, Office of Regulations and Rulings, Penalties Branch (202) 927-2337.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, the President signed into law the North American Free Trade Agreement Implementation Act (the "NAFTA Implementation Act"), Public Law 103-182, 3107 Stat. 2057. Title VI thereof contains provisions pertaining to Customs Modernization and thus is commonly referred to as the Customs Modernization Act or "Mod Act." Sections 614, 615, and 616 of the Mod Act amended sections 508, 509, and 510 of the Tariff Act of 1930, as amended (hereafter referred to as sections 508, 509, and 510) which pertain to recordkeeping requirements applicable to importers and others. (While references throughout this document, including the comments and the guidelines, are to sections of the Tariff Act of 1930, as amended, these sections cross-cite to title 19, United States Code, as follows: section

508 (19 U.S.C. 1508), section 509 (19 U.S.C. 1509), section 510 (19 U.S.C. 1510), section 592 (19 U.S.C. 1592), and section 618 (19 U.S.C. 1618).)

The Mod Act amended various provisions of the Customs laws to grant Customs authority to no longer require the presentation of certain documentation or information at the time of entry. These amendments were intended to reduce the document filing burden on importers and thereby facilitate the entry process. However, in exchange for relieving importers of the obligation to present documents at the time of entry, and in order not to jeopardize the ability of Customs to obtain those entry records at a later date, the Mod Act amended section 508 to require that importers maintain that documentation or information. Section 509 also was amended to set forth procedures for the production of records to Customs, Customs examination of those records, and for the imposition of substantial administrative penalties for a failure of a person required to keep entry records to comply, within a reasonable time, with a demand by Customs for their production.

Section 509(a), as amended by the Mod Act, requires, upon demand by Customs, the production of records required by law or regulation for the entry of merchandise. Another Mod Act amendment to section 509 added subsection 509(e) which requires the Customs Service to identify and publish a list of these entry records which are required to be maintained and produced under subsection (a)(1)(A) of section 509. This list is commonly referred to as the "(a)(1)(A)" list. The "(a)(1)(A)" list was published in the **Customs Bulletin and Decisions** on January 3, 1996, as Treasury Decision (T.D.) 96-1 and republished in the **Federal Register** on July 15, 1996, at 61 FR 36956. It is anticipated that the "(a)(1)(A)" list will change as entry requirements are revised. Penalties under section 509(g) are assessed only in cases where a record identified on the "(a)(1)(A)" list is not provided to Customs within a reasonable time after demand for its production.

On June 16, 1998, Customs published in the **Federal Register** (63 FR 32916) the final rule amending the Customs Regulations to reflect the changes to the Customs recordkeeping laws mandated by the Mod Act. The final rule moved Customs requirements regarding recordkeeping from Part 162 to Part 163 of the Customs Regulations (19 CFR Parts 162 and 163) and amended the requirements in accordance with the Mod Act. In addition, the final rule: (1) set forth, as an appendix to new Part 163 of the Customs Regulations, the previously published "(a)(1)(A)" list; and (2) included conforming amendments to various provisions within Parts 24, 111, and 143 of the Customs Regulations (19 CFR Parts 24, 111, and 143).

The monetary penalties applicable for failure to produce entry records are set forth in § 163.6(b), Customs Regulations (19 CFR 163.6(b)). Under § 163.6(b)(5) of the Customs Regulations (19 CFR 163.6(b)(5)), these penalties may be remitted or mitigated pursuant to section 618.

On March 31, 1999, Customs published a Notice of Proposed Guidelines for the Mitigation of Recordkeeping Penalties in the **Customs Bulletin and Decisions** (Vol. 33, No. 13, page 20) that set forth proposed guidelines for the mitigation of recordkeeping penalties and requested comments from the public. The comment period closed on July 1, 1999. Five commenters responded to the solicitation for comments. The comments submitted are summarized and responded to below.

Discussion of Comments

Proposed Section I - Degrees of Culpability

Comment:

One comment concerned the definition of the term "negligence" in Section I(A) of the proposed guidelines which provides, in pertinent part, that a violation is determined to be negligent if the act or acts are done through the failure to exercise reasonable care "in communicating information so that it may be understood by the recipient." The commenter believes that Customs may interpret this definition to mean that a recordkeeping violation may be warranted where an importer complies with a demand for information, but Customs has difficulty understanding the records or the way in which they were organized by the recordkeeper.

Customs response:

We agree with the commenter that the definition of negligence is too broad to the extent that it includes the reference to communicating information so that it may be understood by the recipient. A penalty may be imposed under section 509(g) if a person fails to comply with a lawful demand for the production of an entry record contained in the "(a)(1)(A)" list, unless that person is excused from a penalty pursuant to one of the exceptions set forth in section 509(g)(3) and § 163.6(b)(3) of the Customs Regulations (19 CFR 163.6(b)(3)). A recordkeeping penalty relates to the production, not the clarity, of the record demanded. Accordingly, the proposed mitigation guidelines have been amended to delete from the definition of negligence the phrase in question: "or in communicating information so that it may be understood by the recipient." Of course, unclear or misleading records may result in penalties under section 592 dealing with civil liability for material false statements, acts, and omissions.

Comment:

One comment concerned the definition of the term "willful conduct" which appears in Section I(B) of the proposed guidelines: "A violation is determined to be willful under section 509 if the failure to comply with a lawful demand for the production of an entry record was committed (or omitted) knowingly, *i.e.*, was done voluntarily and intentionally. . . ." The commenter expressed concern that there are no definitions for the terms "voluntarily" and "intentionally" and that this definition (for willful conduct) could be interpreted broadly.

Customs response:

Customs believes that the language in question should remain unchanged. Customs finds it inappropriate to define these terms, which are of general application and are not limited to recordkeeping penalty concepts. Customs is responsible, on a case by case basis, for determining whether particular culpable behavior of a recordkeeper warrants a penalty and whether it rises to the level of willfulness.

Comment:

One commenter maintained that the proposed definitions of the degrees of culpability ("negligence" and "willful conduct"), as set forth in proposed Sections I(A) and I(B), are unnecessarily confusing because they do not properly track the language of section 509. The commenter argued that the definitions do not refer to the failure to "maintain, store, or retrieve information." The commenter also noted that the proposed definition of negligence, containing the clause, "in ascertaining the facts or in drawing inferences therefrom, in ascertaining the offender's obligations under the statute, or in communicating information so that it may be understood by the recipient," is not related to maintaining, storing, or retrieving information. In addition, the commenter stated that the portion of the proposed definition of willful conduct which concerns the failure to comply by way of a "knowing omission" does not make sense.

Customs response:

Customs does not believe it necessary to amend the definitions of negligence and willful conduct to include the phrase "failure to maintain, store, or retrieve the demanded information" since these are statutory examples which give rise to the failure to comply with a lawful demand for the production of records. The fact that these definitions do not refer to the "failure to maintain, store, or retrieve the demanded information" does not make them confusing or ambiguous. Under the heading "Degrees of Culpability" in Section I of the proposed guidelines, Customs unambiguously stated that a penalty may be imposed under section 509(g) if a person fails to comply with a lawful demand for the production of an entry record contained in the "(a)(1)(A)" list. It is the failure to produce the record that gives rise to a violation and penalty, whether this noncompliance is precipitated by a failure to maintain, store, or retrieve the subject document.. Regarding the portion of the definition of willful conduct referred to by the commenter concerning failure to comply through a "knowing omission," Customs believes that this is a useful part of the definition. For instance, a recordkeeper may commit a knowing omission by, among other things, intentionally or voluntarily omitting a document or information from a submission of other documents or information in response to a lawful demand from Customs. As noted in a previous comment response, reference in the definition of negligence to "communicating information so that it may be understood by the recipient" is being removed by Customs in the final guidelines.

Comment:

One comment concerned the burden of proof for violations determined to be willful under section 509. Section I(B) of the proposed guidelines provides that a violation is willful "if the failure to comply with a lawful demand for the production of an entry record was committed (or omitted) knowingly, *i.e.*, was done voluntarily and intentionally, as established by a preponderance of the evidence." The commenter noted that the definition of willful conduct is the same as that for a fraudulent violation under section 592, but the burden of proof is the "preponderance of the evidence" standard, as opposed to the more rigorous "clear and convincing evidence" standard for section 592 fraud violations. The commenter asserted that if Customs adopts the definition of fraud from section 592 as its definition of willful conduct, then the same burden of proof should be applied.

Customs response:

Unlike the language in section 592, the language of section 509 does not provide for a specific burden of proof. Specifically, Congress did not mandate any particular burden of proof for violations determined to be willful under section 509. In view of this fact, Customs has determined to apply the preponderance of the evidence standard which is the standard of proof that normally applies in civil proceedings.

Proposed Section II - Procedure for Penalty Assessment

Comment:

Two comments concerned Section II(A) of the proposed guidelines which provides that "penalties for the failure to comply with a lawful demand for production of entry records may be assessed by the appropriate Customs field officer for any violation which occurs on or after July 15, 1996, the date of publication of the '(a)(1)(A)' list in the Federal Register." These commenters argued that the correct effective date is June 16, 1998, the date that the recordkeeping regulations were published in the **Federal Register**. The commenters claimed that Customs has no basis or statutory authority to impose penalties for actions which occurred prior to publication of the final regulations.

Customs response:

As explained in the "Background" section of this notice, the Mod Act amended section 509 pertaining to recordkeeping requirements applicable to importers and others. Section 509 was amended to, among other things, require Customs to identify and make available to the importing community, by publication, a list of all records or information required by law or regulation for the entry of merchandise (referred to as the "(a)(1)(A)" list). The "(a)(1)(A)" list was published in the **Federal Register** on July 15, 1996. The legislative history is clear that Congress intended the date of publication of the

"(a)(1)(A)" list to be controlling, rather than the date of the promulgation of the final regulations. Congress stated that publication of the "(a)(1)(A)" list would put importers and others on notice, from the time of that publication, that they have an obligation to maintain and produce these entry records and that substantial penalties may be imposed for the failure to comply with a demand for production of such records. H.R. Rep. No. 361, 103rd Cong., 1st Sess., pt. 1, at 116 (1993). Moreover, Customs actually provided the importing community with notice of the "(a)(1)(A)" list earlier than July 15, 1996. Customs first published the "(a)(1)(A)" list on January 3, 1996, in the **Customs Bulletin and Decisions**. Importers had six months to become familiar with the list by the date of its publication in the **Federal Register**. Accordingly, Customs believes that July 15, 1996, is the correct date to commence the imposition of penalties under the recordkeeping statute for failure to produce lawfully demanded entry records.

Comment:

One comment concerned the proposed procedures that Customs officers will follow in the issuance of pre-penalty and penalty notices for alleged violations of section 509. The proposed guidelines provide that the procedures and requirements which have been set forth for penalties and petitioning rights under section 592 will be followed, to the extent practical, for penalties assessed under section 509. The commenter stated that the issuance of pre-penalty and penalty notices for section 509 violations gives the appearance of creating an unwarranted presumption of wrongdoing by the recordkeeper. Moreover, the commenter argued that the regulations authorizing pre-penalty and penalty notices for section 592 violations do not address the type of information that Customs must provide recordkeepers in order to be able to issue a pre-penalty or penalty notice for section 509 violations. The commenter recommended that Customs implement separate penalty procedures for the issuance of recordkeeping penalties and that it provide specific guidance to Customs officers.

Customs response:

Customs is of the opinion that following the procedures set forth with regard to penalties and petitioning rights under section 592 will adequately provide recordkeepers with sufficient notice of a potential violation under section 509 and will give the alleged violator a reasonable opportunity to respond in writing and in person to the allegations made in the pre-penalty and penalty notices. The regulations covering the procedures for issuing pre-penalty and penalty notices for section 592 violations (19 CFR Part 162, Subpart G) clearly state what Customs must include in the contents of a pre-penalty and penalty notice. The information contained within the pre-penalty and penalty notices will be tailored for the particular recordkeeping viola-

tion. These regulations also provide a clear description of the procedures available to a petitioner for responding to a pre-penalty or penalty notice. Under the circumstances where section 509 provides for no procedures for assessment of penalties, Customs voluntary application of the statutorily mandated procedures set forth in section 592 demonstrates Customs willingness to provide recordkeepers as much information as possible during penalty proceedings.

Comment:

One commenter suggested that the proposed guidelines be amended so that recordkeepers will be fully aware that enforcement of any penalty assessment under section 509 will be subject to judicial review in the same way that assessment of penalties under section 592 is subject to judicial review (under section 592(e)). Specifically, the commenter recommended that the recordkeeping guidelines specify that the district courts will have de novo review of all issues, including the amount of the penalty.

Customs response:

In describing the procedures for penalty assessments, Customs stated in the proposed guidelines that the procedures and requirements which have been set forth for penalties and petitioning rights under section 592 will be followed, to the extent practical, for penalties assessed under section 509. However, it should be noted that Congress, in enacting section 509, did not include a provision concerning judicial proceedings and the appropriate standard of review. In contrast, Congress set forth a provision within section 592(e) concerning judicial proceedings and the standard of review at the U.S. Court of International Trade. Hence, it is within the purview of the judiciary, *e.g.*, district courts, as opposed to Customs, to articulate and apply the appropriate standard of judicial review for section 509 violations. Accordingly, Customs does not believe that it is appropriate to amend the guidelines to state that enforcement of any penalty assessment under section 509 will be subject to de novo judicial review.

Proposed Section III - Administrative Penalty Disposition

Comment:

One comment concerned the meaning of the term "release." Specifically, this commenter argued that there is no basis for treating each line item on a consumption entry as a separate release for purposes of assessing a penalty under section 509. In support of this position, the commenter (citing 19 U.S.C. 58c(a)(9)(A)) noted that the term "release" has generally been synonymous with the term "entered" or "entry". The commenter noted that there is usually only one release per entry (citing § 141.111(b)(2) of the Customs Regulations (19 CFR 141.111(b)(2))). Accordingly, the commenter urged that a recordkeeping penalty should be assessed only once against a single consumption entry.

Customs response:

We believe the commenter's views have some merit and Customs has changed its position. The relevant statutory language references penalties for "each release of merchandise." For a negligence penalty assessment, the penalty amount will not exceed $10,000 or an amount equal to 40% of the TOTAL appraised value of the release document, whichever is less. For a willful penalty assessment, the penalty amount will not exceed $100,000 or an amount equal to 75% of the total appraised value of the release document, whichever is less. The following example is illustrative: On March 1, 2000, Customs makes a demand pursuant to section 509(a)(1)(A) and § 163.6(a) of the Customs Regulations (19 CFR 163.6(a)) for a Multiple Country Declaration as provided for in § 12.130 (19 CFR 12.130), with regard to a shipment of cotton garments imported on January 1, 2000. Of the ten line items comprising the Customs Form 3461 (CF 3461), Customs demands the declaration for line items 1 – 3, which consist of ladies cotton shorts. The total appraised value of the CF 3461 is $100,000. Line items 1 – 3 have an appraised value of $10,000, $5,000, and $2,000, respectively. The recordkeeper fails to produce the requested document for line item 3, and such failure is determined to be the result of negligence. The statutory maximum for recordkeeping violations is 40% of the appraised value of the CF 3461 ($40,000) or $10,000, whichever is less. In this case, since 40% of the appraised value of the CF 3461 is $40,000, the maximum negligence penalty that Customs may assess for this CF 3461, under the statute, is $10,000.

Comment:

One commenter was concerned that Customs may attempt to impose recordkeeping penalties against importers in an attempt to gain access to the books and records of those companies' foreign affiliates.

Customs response:

The recordkeeping penalty guidelines are designed to be neutral, in that they are not intended to focus on any particular exporter, country, or industry. Under the statute and applicable regulations, Customs has the authority to impose recordkeeping penalties against a broad spectrum of parties. A foreign parent of an importer of record may be one of the parties who falls within the scope of section 508. Therefore, if Customs can establish the elements of a recordkeeping violation, the foreign company itself may be liable for penalties under section 509(g). Moreover, Customs will exercise its authority to gain access to records consistent with law, including sections 508 – 510.

Comment:

One comment concerned the assessment of penalties under the proposed guidelines for negligent violations against participants in the Recordkeeping Compliance Program. The commenter argued that participants in the program should be exempt from penalties for all negligent violations. The commenter believes that program par-

ticipants should be assessed penalties and face possible removal from the program only if a pattern of negligent behavior can be established.

Customs response:

Under section 509(g)(7)(A), "repeated violations by the recordkeeper may result in the issuance of penalties and removal of certification under the program until corrective action, satisfactory to the Customs Service, is taken." Consequently, the first time that a participant in the Recordkeeping Compliance Program fails to comply with a lawful demand for the production of an entry record contained in the "(a)(1)(A)" list, the recordkeeper will receive a notice of violation from Customs (akin to a warning). However, if the same recordkeeper fails to comply with another lawful demand for the production of an entry record within three years from the date of the prior violation, then Customs will consider the subsequent violation to constitute a repetitive negligent violation. In cases where a participant in the program commits a repetitive negligent violation, Customs may assess a monetary penalty and may remove the participant from the program until corrective action has been taken.

Comment:

One comment concerned the factors that Customs may consider in deciding whether to issue a recordkeeping penalty in the first place. The commenter was concerned that the mitigation guidelines do not recognize that when dealing on a daily basis with thousands of paper files, it is likely that a small percentage of documents will be lost or misplaced by the best of recordkeepers. Recognizing that a recordkeeper may not be able to produce all the documents requested by Customs, the commenter suggested that Customs create some empirical standards by which to judge whether a certain threshold percentage of misplaced or lost files constitutes negligence.

Customs response:

The proposed guidelines provide that in initially deciding whether or not to issue a penalty, the appropriate Customs officer may take into account the age and nature of the documents, the overall number of documents requested versus the number of documents produced, and the overall recordkeeping performance of the person. Therefore, Customs will consider the particular factual situation surrounding a case in deciding whether to initiate a penalty. As each case is decided based upon its particular factual situation, Customs does not believe that it is feasible to create empirical standards by which to judge whether a certain percentage of misplaced or lost documents constitutes negligence under the recordkeeping statute.

Comment:

One commenter noted that in view of the penalties imposed under the recordkeeping statute, the prudent broker/filer should abandon

the "paperless" entry program as a means of reducing a great deal of liability both to the broker and his client.

Customs response:

Customs disagrees strongly with this approach. Even if the recordkeeper chooses to file a "paper" entry with Customs, unless the information demanded was presented to and retained by Customs at the time of entry or was submitted in response to an earlier demand by Customs, the recordkeeper is still required to continue to maintain these documents and to produce them upon demand by Customs (section 509(g)(3)(C) and 19 CFR 163.3).

Comment:

Two comments concerned the amount of the penalties in the proposed guidelines for willful and negligent violations of section 509. The commenters argued that the penalties in the proposed guidelines are as severe as the penalties which can be imposed under section 592, and one commenter noted that the penalty guidelines for section 592 negligence violations provide for lesser penalties than the penalties contained in the proposed recordkeeping guidelines. One commenter stated that the fact that such penalties will be assessed for each release of merchandise is extremely harsh and unwarranted in view of the fact that a recordkeeper may, inadvertently, repeat the same violation multiple times prior to the violation being discovered. A commenter recommended that Customs reduce the amount of the penalties for recordkeeping violations so that they are less than penalties for violations of section 592. One comment suggested that in assessing a penalty, Customs take into account the number of prior violations and whether the failure to comply with a Customs demand for information indicates a continuing course of conduct involving a number of entries.

Customs response:

Customs believes that the mitigation guidelines should remain unchanged. The statute provides for the maximum penalties allowable for recordkeeping violations and the guidelines reflect this mandate. The fact that, in some cases, the penalties for recordkeeping violations may be comparable to or greater than penalties assessed for a violation of section 592 is not relevant. Congress generally intended the two statutes to be separate and distinct. With regard to the suggestion that Customs take into account in the guidelines the number of violations, there is no statutory basis for adopting such a course of action. The statute provides that if a recordkeeper fails to comply with a lawful demand for information from Customs, a penalty will be assessed "for each release of merchandise." The statute does not differentiate between first violations and second and subsequent violations for non-participants in the Recordkeeping Compliance Program. An exception is made in the case of a first-time negligent violation committed by program participants.

Comment:

One commenter suggested that the guidelines be amended to include the opportunity to make a prior disclosure of a recordkeeping violation, using the procedures set forth in section 162.74 of the Customs Regulations (19 CFR 162.74).

Customs response:

The opportunity to make a prior disclosure of a recordkeeping violation is not specifically provided for in the recordkeeping statute. However, the fact that a recordkeeper informs Customs in writing that they are unable to produce certain "(a)(1)(A)" documents before Customs makes a formal demand for the production of these documents may be considered an extraordinary circumstance in the mitigation of a recordkeeping penalty should Customs later demand these records.

Proposed Section IV - Mitigating Factors

Comment:

One comment concerned the factors that Customs may consider in setting the proposed (pre-penalty notice) or assessed penalty (penalty notice) or in mitigating the assessed penalty for both participants and non-participants in the Recordkeeping Compliance Program. The commenter noted that section 509(g)(7)(D) provides, in part, that "any penalty issued for a recordkeeping violation shall take into account . . . the nature of the demanded records." The commenter suggested that the guidelines be amended to include as a mitigating factor the nature of the record demanded, as required by the statute.

Customs response:

Customs stated in proposed Section III(A) of the guidelines that "in deciding whether or not to issue a penalty, the deciding officer may take into account the age and nature of the documents, the overall number of documents requested versus the number of documents produced, and the overall recordkeeping performance of the person." Thus, under the guidelines, the nature of the demanded records is already a factor that Customs may consider in deciding whether or not to issue a penalty. Consequently, Customs does not believe it necessary to repeat this factor as a mitigating factor in Section IV.

Proposed Section V - Aggravating Factors

Comment:

One comment concerned the first aggravating factor: "The person required to maintain and produce records is experienced in the customs transactions to which the records relate." The commenter questioned this factor since all Customs recordkeepers will generally be experienced in their own transactions. The commenter also requested that the meaning of the term "misleading information," which appears in aggravating factor number five concerning the submission of

such information, should be clarified. The commenter also believes that aggravating factor number seven - "the importer or other party has demonstrated evidence of a motive to evade the production of entry records or information" - is ambiguous and warrants a clearer definition.

Customs response:

In determining whether the experience of the recordkeeper may be considered an aggravating factor, Customs will generally consider the importing history of the importer or other person charged with a recordkeeping violation. A person who does not have a prior history of importing merchandise into the U.S. should not be considered to have the same level of expertise as a person who has been importing merchandise into the U.S. for a period of years or even months. Consequently, the failure of the more experienced importer to maintain, store, or retrieve, (and thus produce) the records or information requested by Customs may be considered an aggravating factor for purposes of determining the amount of the proposed or assessed penalty or the amount of the final, mitigated penalty. Hence, this aggravating factor envisions recordkeepers of disparate experience. Customs also notes that inexperience is considered a mitigating factor (see factor seven in Section IV of the guidelines). With regard to the definition of "misleading information," Customs believes that because each case must be decided on its own unique facts, it is inappropriate for Customs to attempt to state specific examples of types of information that may be considered misleading. Customs does not believe that it is appropriate to include a more specific definition of evidence of a "motive to evade the production of entry records or information" since each case is unique and must be decided based upon the particular facts.

Proposed Section VI - Responsibilities

Comment:

One comment pertained to the fact that the Port Directors will be responsible for ensuring that the provisions of these guidelines are implemented uniformly within their respective local jurisdictions. The commenter was concerned that since each Port Director will have the authority to interpret the guidelines, the guidelines will not be applied uniformly across the country.

Customs response:

In order to ensure that there is consistency among all the ports in applying the guidelines, Headquarters (Office of Regulations and Rulings, Penalties Branch) will review all pre-penalty notices, prior to issuance and regardless of the penalty amount, for a period of one year after implementation of the final guidelines. Further, Headquarters always will have the discretion to review a pre-penalty notice if warranted by the circumstances. Additionally, Fines, Penal-

ties, and Forfeitures Officers who will possess the authority to interpret the guidelines are required to follow Headquarters policies. This should enhance uniformity.

CONCLUSION

After analysis of the comments, Customs has decided to adopt as final the proposed guidelines as published, with certain editorial changes and the following changes noted in the above discussion of comments: (i) The definition of "negligence" in the proposed guidelines has been modified by deleting the following language: "or in communicating information so that it may be understood by the recipient," and (ii) the term "release of merchandise" will not pertain to each line item of the CF 3461 but to the entire CF 3461. Also, upon general review and further consideration, Customs has decided to add the following language to the first sentence of mitigation factor 6 in Section IV of the guidelines, "or established by that official's contemporaneously created written record, . . ."

The final guidelines as adopted follow:

GUIDELINES FOR THE MITIGATION OF PENALTIES FOR VIOLATIONS OF 19 U.S.C. 1509

BACKGROUND

Pursuant to Title VI of the North American Free Trade Agreement Implementation Act (the "NAFTA Implementation Act"; Public Law 103-182, 107 Stat. 2057), commonly referred to as the Customs Modernization Act or "Mod Act," a person who is subject to Customs recordkeeping requirements may be liable for penalties, unless excused (upon meeting certain criteria), for failure to comply with a lawful demand for the production of entry records. In all cases, the amount of the penalty will depend upon whether the failure to produce the records was the result of willful conduct or negligence. These penalties are provided for under section 509 of the Tariff Act of 1930, as amended (19 U.S.C. 1509; hereafter section 509; also referred to in these guidelines as the recordkeeping statute).

In addition to any penalty that may be imposed under section 509, if the requested entry records relate to the eligibility of merchandise for a special rate of duty, the entry covering the merchandise will be liquidated or (notwithstanding 19 U.S.C. 1514 and 1520) reliquidated under the column 1 general rate of duty or, if determined to be applicable by Customs, under the column 2 rate of duty.

The assessment of a penalty under section 509 for the failure to produce entry records for Customs inspection will not limit or preclude the Customs Service from issuing, or seeking the enforcement of, a Customs summons.

Specific procedures for issuing a pre-penalty notice (notice of intent to assess a penalty claim) and a penalty notice (notice of assessed penalty claim) were not set forth in section 509. Therefore, Customs will follow the procedures that are set forth in section 592 of the

Tariff Act of 1930, as amended (19 U.S.C. 1592; hereafter section 592) and which are found in Parts 162 and 171 of the Customs Regulations (19 CFR Parts 162 and 171).

The recordkeeping statute, under section 509(g)(5), provides that any person against whom administrative penalties have been assessed thereunder will be able to petition for remission or mitigation of those penalties under section 618 of the Tariff Act of 1930, as amended (19 U.S.C. 1618; hereafter section 618). The below guidelines for recordkeeping violations will be used by the Customs Service in its disposition of penalties assessed under section 509. In addition, it is intended that these guidelines also will be applied by Customs officers in initially proposing a penalty (pre-penalty notice) and finally assessing a penalty (penalty notice) under section 509(g), prior to the mitigation stage. Except as provided in section 509(g)(4), the assessment of recordkeeping penalties is not an exclusive remedy. Customs administrative disposition of penalties under section 509, determined in accordance with these guidelines, does not in any way affect the authority of the U.S. District Court to impose monetary penalties or sanctions for the failure to produce entry records summoned by Customs.

In these guidelines, the term "person" is used when referring to an entity subject to the requirements of section 509. (See sections 509(a)(1)(B) and 509(g), and 19 CFR 163.6.) In addition, in these guidelines, the term "entry record" or "record" is used to represent the "information" referred to in section 509(g) and the "records," "documents," and "information" referred to in the Appendix to 19 CFR Part 163 (the "(a)(1)(A)" list). (See also sections 509 (a)(1)(A) and 509(g)(1), and 19 CFR 163.1(a) and 163.1(f).)

I. Degrees of Culpability

In general, a penalty may be imposed pursuant to section 509(g) if a person subject to the provisions of section 509 fails to comply with a lawful demand by Customs for the production of an entry record contained in the "(a)(1)(A)" list and that person is not excused from a penalty pursuant to one of the exceptions set forth in section 509(g)(3) and § 163.6(b)(3) of the Customs Regulations (19 CFR 163.6(b)(3)). The "(a)(1)(A)" list consists of records that are required for the entry of merchandise and which must be produced upon a demand issued by Customs under section 509(a)(1)(A). (See App. to 19 CFR Part 163.) There are two degrees of culpability for penalties under section 509(g) which are defined as follows:

(A) Negligence: A violation under section 509 is determined to be negligent if the failure to comply with a lawful demand for the production of an entry record results from an act or acts (of commission or omission) done through the failure to exercise the degree of reasonable care and competence expected from a person in the same circumstances in ascertaining the facts, drawing inferences therefrom, or in ascertaining the offender's obligations under the statute.

(B) Willful Conduct: A violation under section 509 is determined to be willful if the failure to comply with a lawful demand for the production of an entry record was committed (or omitted) knowingly, i.e., was done voluntarily and intentionally, as established by a preponderance of the evidence.

II. Procedure for Penalty Assessment

(A) Commencement of Penalty Actions - Penalties under section 509 for failing to comply with a lawful demand for the production of entry records may be assessed by the appropriate Customs field officer for any violation which occurs on or after July 15, 1996, the date of publication of the "(a)(1)(A)" list in the **Federal Register**.

(B) Issuance of Pre-penalty and Penalty Notices - The procedures and requirements which have been set forth relative to penalties and petitioning rights under section 592 will be followed, to the extent practical, where Customs has reasonable cause to believe that a violation of section 509 has occurred. (See 19 CFR 162.77 - 79 and 19 CFR Part 171.) As July 15, 1996, is the date Customs may commence the imposition of penalties under the recordkeeping statute, no pre-penalty notice, regardless of the monetary penalty amount, issued from July 15, 1996, through a one year period commencing on the date of implementation of these final guidelines, will be issued by the appropriate Customs field officer prior to Customs Headquarters (Office of Regulations and Rulings, Penalties Branch) review and approval. After the conclusion of the one year period, this requirement will cease; however, Headquarters, in its own discretion, may review a pre-penalty notice if warranted by the circumstances. Any penalty imposed under section 509 may be remitted or mitigated under section 618. Part 171, Customs Regulations (19 CFR Part 171), sets forth the general procedures for filing a petition for remission or mitigation of a fine, penalty, or forfeiture incurred under any law administered by Customs.

In initially deciding whether or not to issue a penalty under section 509(g), the appropriate Customs officer may take into account the age and nature of the documents, the overall number of documents requested versus the number of documents produced, and the overall recordkeeping performance of the person.

III. Administrative Penalty Disposition

(A) Mitigation Guidelines - Once a monetary penalty is incurred (penalty notice issued) under section 509(g) for failure to produce "(a)(1)(A)" entry records within a reasonable time of a lawful demand, such penalty may be remitted or mitigated under section 618 if it is determined that there exist circumstances that justify remission or mitigation. The below guidelines for recordkeeping violations will be used by the Customs Service in its disposition of penalties assessed under section 509.

In addition to being used as mitigation guidelines, these guidelines

are intended to be applied by Customs officers in initially arriving at the proper assessment of monetary penalties, at both the proposed penalty and assessed penalty stages. In this regard, once it is determined that a penalty will be issued, the appropriate Customs officer, in initially determining the amount of the penalty, will consider the entire case record, taking into account the presence of any mitigating or aggravating factors. Any such factors applied should be set forth in the pre-penalty and penalty notices.

In addition to administrative penalties assessed under section 509, the Mod Act recognizes the authority of courts to impose monetary penalties pursuant to section 510(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1510(a); hereafter section 510(a)) for the failure to produce records summoned by Customs pursuant to section 509. Moreover, it should be understood that these guidelines do not limit or preclude the Customs Service from issuing or seeking the enforcement of a customs summons.

(B) Dispositions - Liabilities incurred under section 509 will be mitigated, as appropriate, and after submission of a petition under section 618, in accordance with the following guidelines:

(1) Non-Participants in Recordkeeping Compliance Program -

(a) Definition - Non-participants in the Recordkeeping Compliance Program are all persons required to maintain records who have not been certified by Customs to participate in the Recordkeeping Compliance Program (referred to in this subsection as non-participants).

(b) In cases where a non-participant in the Recordkeeping Compliance Program fails to comply with a demand for the production of records required to be maintained under section 509(a)(1)(A), Customs may mitigate the penalty amount as set forth below.

(i) Negligent Violations - Penalty dispositions for a negligent violation committed by a non-participant in the Recordkeeping Compliance Program will be calculated as follows: If the violation for non-compliance (failure to timely produce a demanded record) is a result of the negligence of the person in maintaining, storing, retrieving, or producing the demanded entry record, such person will be subject to a penalty, for each release of merchandise, not to exceed the lesser of an amount ranging from a minimum of $5,000 to a maximum of $10,000 or an amount ranging from a minimum of 20 percent of the appraised value of the merchandise to a maximum of 40 percent of the appraised value of the merchandise.

(ii) Willful Violations - Penalty dispositions for a willful violation committed by a non-participant in the Recordkeeping Compliance program will be calculated as follows: If the violation for non-compliance (failure to timely produce a demanded record) results from the willful failure to maintain, store, retrieve, or produce demanded entry records, the penalty for each release will be the lesser of an amount ranging from a minimum of $50,000 to a maximum of $100,000 or an amount ranging from a minimum of 45 percent of the appraised

value of the merchandise to a maximum of 75 percent of the appraised value of the merchandise.

(c) Remission of Claim - If the Customs field officer believes that a claim for monetary penalty should be remitted or mitigated for a reason not set forth in these guidelines, the Customs field officer should first seek approval from the Chief, Penalties Branch, Customs Service Headquarters (Office of Regulations and Rulings).

(2) Participants in the Recordkeeping Compliance Program -

(a) Description of Program - The Customs Recordkeeping Compliance Program (sections 509(f) and 509(g)(7), and 19 CFR 163.12) is open to all parties listed in section 508(a) (19 U.S.C. 1508(a); hereafter section 508(a)) and § 163.2(a) of the Customs Regulations (19 CFR 163.2(a)). It is a voluntary program under which persons certified as participants (referred to in this subsection as participants) by Customs may be eligible for an alternative to penalties that otherwise might be assessed under section 509(g) and § 163.6(b) of the Customs Regulations (19 CFR 163.6(b)) for failure to produce a demanded entry record.

In general, a special alternative procedure applies in the case of negligent violations of section 509 committed by participants in the Recordkeeping Compliance Program who are generally in compliance with its procedures and requirements. However, even where a participant is eligible for an alternative to a monetary penalty, participation in the Recordkeeping Compliance Program has no limiting effect on Customs authority to use a summons, court order, or other legal process to compel the production of records by the participant.

(b) Certification Requirements for Participants in the Recordkeeping Compliance Program - A person may be certified as a participant in the Recordkeeping Compliance Program after meeting the general recordkeeping requirements established under section 509(f) and § 163.12(b)(3) of the Customs Regulations (19 CFR 163.12(b)(3)). Certified participants are those persons who are required to maintain records under section 508(a) and implementing regulations and who have recordkeeping systems certified by Customs under a Recordkeeping Compliance Program.

(c) Procedures for Participants in Recordkeeping Compliance Program -

(i) First-time negligent violations made by participants in the Recordkeeping Compliance Program (section 509(g)(7) and 19 CFR 163.12(d)). Written Notice of Violation - In the absence of willfulness or a repetitive negligent violation, when a participant in the Recordkeeping Compliance Program, who is generally in compliance with its procedures and requirements, does not timely produce a demanded entry record for a release of merchandise, or fails to timely provide the information contained in the demanded entry record by acceptable alternative means, Customs will issue a written notice (warning letter) of violation to the participant in lieu of a pre-penalty notice. A repetitive negligent violation is any failure to comply with a lawful demand for the production of an entry record contained in

the "(a)(1)(A)" list which occurs within three years from the date of the previous violation.

(ii) The contents of the notice of violation issued to a participant in the Recordkeeping Compliance Program for failure to produce a demanded entry record are set forth in section 509(g)(7)(B) and § 163.12(d)(2) of the Customs Regulations (19 CFR 163.12(d)(2)). Within a reasonable time after receiving written notice of a recordkeeping violation, the participant will notify the Customs Service of the steps it has taken to prevent a recurrence of the violation. (See section 509(g)(7)(C) and 19 CFR 163.12(d)(3).) A "reasonable time" will be determined by Customs on a case by case basis, with opportunity, where appropriate, for extension of time.

(iii) Willful or repetitive negligent violations by participants in the Recordkeeping Compliance Program - When a participant in the Recordkeeping Compliance Program commits a repetitive negligent violation or a willful violation, the issuance of monetary penalties is appropriate, as may be removal from the program until corrective action, satisfactory to the Customs Service, is taken. In such cases, the penalty assessment guidelines (for negligent violations and willful violations) that apply to non-participants in the Recordkeeping Compliance Program will be applied.

(iv) Example - A participant in the Recordkeeping Compliance Program files an entry summary on January 1, 1999, for a shipment of telephones. By letter dated February 1, 1999, Customs makes a written demand pursuant to section 509(a)(1)(A) and § 163.6(a) of the Customs Regulations (19 CFR 163.6(a)) for the production of the invoice covering the telephones listed on the entry summary. If the participant fails to produce the invoice for the subject merchandise within the specified time period, and such failure is the result of negligence, Customs will issue a written notice of violation to the participant. On April 1, 1999, Customs makes another lawful written demand of the same participant in connection with an entry of televisions, this time for the production of a GSP declaration. The participant's negligent failure to produce the GSP declaration for the entry of the televisions within the specified time period constitutes a repetitive violation. Accordingly, Customs may assess a penalty for the second violation using the guidelines for negligent violations applicable to non-participants in the Recordkeeping Compliance Program.

IV. Mitigating Factors

The following factors will be considered in mitigation of the assessed penalty for both participants and non-participants in the Recordkeeping Compliance Program. (These factors will also be considered in initially determining the amount of the proposed and assessed penalty.) The case record must sufficiently establish their existence. The following list is not all-inclusive.

1) Communications are impaired because of a language barrier or

because of the mental condition or a physical ailment of the violator;
2) The violator cooperates with Customs officers. To obtain the benefit of this factor, the violator must exhibit extraordinary cooperation beyond that expected from a person under investigation for a Customs violation;
3) The violator takes immediate remedial action. This factor, applicable in appropriate cases, requires the production of the demanded entry records prior to the issuance of a Penalty Notice. The violator must provide evidence that, immediately after learning of the violation, substantial remedial action was taken to correct organizational or procedural defects. Customs encourages immediate remedial action to help prevent future incidents of non-compliance;
4) The violator has a prior good record. This factor will be considered only if the violator is able to demonstrate a consistent pattern of importations without violation of section 509 or any other statute prohibiting false or fraudulent importation practices. This factor will not be considered for a willful violation;
5) Inability to pay the Customs penalty. The violator claiming the existence of this factor must present documentary evidence to support it, including copies of income tax returns for the previous three (3) years and an audited financial statement for the
most recent fiscal quarter. In certain cases, Customs may waive the production of an audited financial statement or may request alternative or additional financial data in order to facilitate an analysis of a claim of inability to pay (*e.g.*, examination of the financial records of a foreign entity related to the U.S. company claiming inability to pay);
6) Contributory Customs Error. This factor includes misleading or erroneous advice given by a Customs official *in writing* to the violator, or established by that official's contemporaneously created *written* record, but only if the violator reasonably relied upon the information and fully and accurately informed Customs of all relevant facts. The concept of comparative negligence may be applied in determining the weight to be assigned to this factor. If it is determined that the Customs error was the sole cause of the violation, the proposed or assessed penalty claim will be canceled. If the Customs error contributed to the violation, but the violator is also culpable, the Customs error is to be considered a mitigating factor;
7) The violator is inexperienced in the customs transactions to which the records relate; or
8) The violator, in good faith, sufficiently complies with the demand for the production of records, in comparison to the total number of importations for which records are requested. This applies as a mitigation factor where the violator's level of compliance is not substantial enough to avoid the penalty under section 509(g)(3)(B).

V. Aggravating Factors

Certain aggravating factors may be considered by Customs in evaluating a claim for mitigation of the assessed penalty. (These factors

will also be considered in initially determining the amount of the proposed and assessed penalty.) The presence of one or more aggravating factors may not be used to raise the level of culpability attributable to the alleged violation, but may have the effect of offsetting the presence of mitigating factors. The following factors will be considered aggravating factors. The case record must sufficiently establish their existence. The following list is not all-inclusive.

1) The violator is experienced in the customs transactions to which the records relate;

2) The records were concealed, destroyed, or withheld to evade U.S. law;

3) The violator exhibited aggravating behavior, including extreme lack of cooperation, verbal or physical abuse, or attempted destruction of records;

4) The violator has a prior recordkeeping violation for which a final administrative finding of culpability has been made;

5) The violator has provided misleading information concerning the violation;

6) The violator has obstructed an investigation or audit; or

7) The violator has demonstrated a motive to evade the production of entry records or information requested by Customs.

VI. Responsibilities

The Fines, Penalties, and Forfeitures Officer will be responsible for ensuring that the provisions of these guidelines are implemented uniformly within the local jurisdiction. Guidance concerning the application of these guidelines may be requested from the Chief, Penalties Branch, Headquarters ((202)927-2344), or the appropriate Assistant Chief Counsel or Associate Chief Counsel office. The statements made herein are not intended to create or confer any rights, privileges, or benefits for any private person, but are intended merely for internal guidance.

Dated: September 14, 2000

RAYMOND W. KELLY
Commissioner of Customs

U.S. Customs Service

Treasury Decisions

19 CFR PART 10

(T.D. 00 – 74)

RIN 1515- AC79

REFUND OF DUTIES PAID ON IMPORTS OF CERTAIN WOOL PRODUCTS

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to amend the Customs Regulations to implement the provisions of section 505 of Title V of the Trade and Development Act of 2000. Section 505 permits U.S. manufacturers of certain wool articles to claim a limited refund of duties paid in each of calendar years 2000, 2001, and 2002 on imports of select wool products. The maximum amount eligible to be refunded in each of these successive claim years is limited to an amount not to exceed one-third of the amount of duties actually paid on such wool products imported in calendar year 1999. The proposed amendments contained in this document set forth the eligibility, documentation, and procedural requirements necessary to substantiate a claim for a duty refund under the terms of the statute.

DATES: Comments must be received on or before November 16, 2000.

ADDRESS: Written comments (preferably in triplicate) may be submitted to and inspected at the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, 1300 Pennsylvania Avenue, N.W., 3rd Floor, Washington, D.C. 20229.

FURTHER INFORMATION CONTACT: Bruce Ingalls, Chief, Entry and Drawback Management (202) 927-1082.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On May 18, 2000, President Clinton signed into law the Trade and

Development Act of 2000 ("the Act"), Public Law 106-200, 114 Stat. 251. Title V of the Act concerns imports of certain wool articles and sets forth provisions intended to provide tariff relief to U.S. manufacturers of men's and boys' worsted wool suits, suit-type jackets, and trousers. Within Title V, section 505 provides for a limited refund of duties paid on imports of certain wool articles.

Section 505

Paragraph (a) of section 505 provides for a refund of duties paid on imports of certain worsted wool fabrics. Specifically, paragraph (a) provides for a limited refund of duties paid, in each of calendar years 2000, 2001 and 2002, on imports of worsted wool fabrics of the kind described in subheadings 9902.51.11 or 9902.51.12 of the Harmonized Tariff Schedule of the United States (HTSUS), to manufacturers of men's or boys' suits, suit-type jackets, or trousers of such imported worsted wool fabric, who may or may not be the importer of the worsted wool fabric. The amount of duties eligible to be refunded to the manufacturer in each of calendar years 2000, 2001, and 2002 is limited to an amount not to exceed one-third of the amount of duties actually paid by the manufacturer or the importer on such worsted wool fabrics imported in calendar year 1999.

It is noted that the statute prohibits a broker or other individual acting on behalf of the manufacturer from being eligible to claim such a duty refund. Section 505(b) provides for a refund of duties paid on imports of certain wool yarn. This provision permits a manufacturer of worsted wool fabric, who has imported wool yarn of the kind described in subheading 9902.51.13, HTSUS, to be eligible to claim a limited refund of the duties paid on entries of such wool yarn in each of calendar years 2000, 2001, and 2002. The amount of duties eligible to be refunded in each of these calendar years is limited to an amount not to exceed one-third of the amount of duties actually paid by the importing-manufacturer on such wool yarn imported in calendar year 1999.

Section 505(c) provides for a refund of duties paid on imports of certain wool fiber and wool top. Paragraph (c) permits a manufacturer of wool yarn or wool fabric, who has imported wool fiber or wool top of the kind described in subheading 9902.51.14, HTSUS, to be eligible to claim a limited refund of the duties paid on entries of such wool fiber or wool top in each of calendar years 2000, 2001, and 2002. Again, the amount of duties eligible to be refunded in each of these calendar years is limited to an amount not to exceed one-third of the amount of duties actually paid by the importing-manufacturer on such wool yarn imported in calendar year 1999.

It should be noted that while sections 505(b) and (c) require that a manufacturer also be the importer in order to be eligible to claim a wool duty refund under the terms of the statute, section 505(a) does not require a manufacturer of men's or boys' suits, suit-type jackets, or trousers of worsted wool fabric to also be the importer of the wor-

sted wool fabric to be eligible for the refund.

Section 505(d) requires that any claimant applying for a wool duty refund must identify each entry involved and provide appropriate information by which Customs is able to substantiate a claim for a refund of duties under this statute.

HTSUS subheadings identified in sections 501, 502 and 505 of the Act

Paragraphs (a), (b) and (c) to section 505 identify the HTSUS tariff provisions set forth in subchapter II of chapter 99 that provide the basis for a duty refund claim under this section. The chapter 99 provisions were promulgated in sections 501 and 502 of the Act for purposes of implementing temporary duty reductions and temporary duty suspensions for certain wool products.

Although the chapter 99 subheadings do not become effective until January 1, 2001, they are statutorily defined in sections 501 and 502 of the Act as including subheadings for eligible wool products that were in effect in the 1999 and 2000 HTSUS. As section 505 permits claims for duty refunds to be made in calendar year 2000, and the amount of duties eligible to be refunded for claim year 2000 is limited to an amount not to exceed one-third of duties actually paid on select wool products imported in calendar year 1999, it is necessary to identify the 1999 and 2000, HTSUS, wool provisions that correlate to the chapter 99 subheadings identified in section 505. To that end, it is noted that:

- Section 501(a)(1) creates new subheading 9902.51.11, HTSUS, that describes "[F]abrics, of worsted wool, with average fiber diameters greater than 18.5 micron, all the foregoing certified by the importer as suitable for use in making suits, suit-type jackets, or trousers (provided for in subheading 5111.11.70, 5111.19.60, 5112.11.20, or 5112.19.90)";
- Section 501(b)(1) creates new subheading 9902.51.12, HTSUS, that describes "[F]abrics, of worsted wool, with average fiber diameters of 18.5 micron or less, all the foregoing certified by the importer as suitable for use in making suits, suit-type jackets, or trousers (provided for in subheading 5111.11.70, 5111.19.60, 5112.11.20, or 5112.19.90)";
- Section 502(a) creates new subheading 9902.51.13, HTSUS, that describes "[Y]arn, of combed wool, not put up for retail sale, containing 85 percent or more by weight of wool, formed with wool fibers having diameters of 18.5 micron or less (provided for in subheading 5107.10.00)"; and
- Section 502(b) creates new subheading 9902.51.14, HTSUS, that describes "[W]ool fiber, waste, garnetted stock, combed wool, or wool top, having average fiber diameters of 18.5 micron or less (provided for in subheadings 5101.11; 5101.19; 5101.21; 5101.29; 5101.30; 5103.10; 5103.20; 5104.00; 5105.21; or 5105.29)".

Proposed Implementation

In this document, Customs is proposing its implementation of section 505. As the wool duty refund program authorized by section 505 limits the total amount of refunds available to eligible claimants in each of calendar years 2000, 2001 and 2002, to an amount not to exceed one-third of the duties paid on eligible wool products imported in calendar year 1999, Customs needs to determine the total amount of duties paid in calendar year 1999 both on an aggregate level and per claimant.

Using ACS to determine the amount of duty refund eligible to be received in each of calendar years 2000, 2001 and 2002

Customs will use government data generated by the Automated Commercial System (ACS) to determine the total amount of duties paid on eligible wool products imported in calendar year 1999. To this end, separate ACS queries will be run to determine the total amount of duties paid on wool products imported in calendar year 1999 for the following HTSUS subheading categories:

- 5112.11.20 and 5112.19.90;
- 5107.10.00; and
- 5101.11, 5101.19, 5101.21, 5101.29, 5101.30, 5103.10, 5103.20, 5104.00, 5105.21, and 5105.29.

For purposes of duty refund claims made pursuant to section 505(a), one-third of the ACS-generated amount for duties paid on 1999 imports of merchandise described in HTSUS subheadings 5112.11.20 and 5112.19.90 will establish the maximum amount that is eligible to be refunded in calendar years 2000, 2001, and 2002.

For purposes of duty refund claims made pursuant to section 505(b), one-third of the ACS-generated amount for duties paid on 1999 imports of merchandise described in HTSUS subheadings 5107.10.0 will establish the maximum amount that is eligible to be refunded in calendar years 2000, 2001, and 2002.

For purposes of duty refund claims made pursuant to section 505(c), one-third of the ACS-generated amount for duties paid on 1999 imports of merchandise described in HTSUS subheadings 5101.11, 5101.19, 5101.21, 5101.29, 5101.30, 5103.10, 5103.20, 5104.00, 5105.21, and 5105.29 will establish the maximum amount that is eligible to be refunded in calendar years 2000, 2001, and 2002.

It should be noted that although one-third of the ACS-generated figure for each of these categories establishes the maximum amount that is eligible to be refunded in calendar years 2000, 2001, and 2002, this entire amount may not necessarily be refunded. Only those amounts of duties that are substantiated by manufacturers, to Customs satisfaction, will be eligible for refund.

Carded wool fabrics do not provide the basis for a section 505 wool duty refund

Customs notes that HTSUS subheadings 5111.11.70 and 5111.19.60 are not included in the above discussion for the following reason. Section 505(a) of the Act authorizes a refund of duties paid on imports of worsted wool fabrics. Section 505(a) references two new HTSUS subheadings, 9902.51.11 and 9902.51.12, that describe worsted wool fabrics and were intended to provide the basis for a wool duty refund under the terms of the statute. Even though these chapter 99 tariff provisions were created in section 501(a)(1) of the Act and are statutorily defined as including HTSUS subheadings 5111.11.70 and 5111.19.60, these two HTSUS subheadings provide for carded wool fabrics and not worsted wool fabrics. Accordingly, Customs will not consider them purposes of the proposed wool duty refund program. Rather, Customs will only consider the correlating subheadings covering worsted wool fabrics identified above, *i.e.*, HTSUS subheadings 5112.11.20 and 5112.19.90.

Proposed Customs Regulations

Customs is proposing to amend the Customs Regulations by adding a new § 10.184 to implement the terms of section 505. Section 10.184 sets forth the proposed eligibility, documentation and procedural requirements necessary for a claimant to establish the amount of duties paid on eligible wool products in calendar year 1999, and to substantiate a claim for a duty refund in the years 2000, 2001 and 2002 under the statute.

Prospective wool duty refund claimants must file a letter of intent with Customs to substantiate the amount of duties paid on eligible wool products imported in calendar year 1999

Customs is proposing that an eligible manufacturer that expects to seek a section 505 duty refund in calendar years 2000, 2001, and 2002, must file with Customs a letter of intent to that effect, along with documentation that substantiates, to Customs satisfaction, the amount of duties paid on eligible wool products imported in calendar year 1999.

As section 505 permits both importing-manufacturers and, in limited circumstances, manufacturers who are not importers, to claim a duty refund, the proposed requirements for filing a letter of intent, with appropriate substantiating documentation, are different for each class of claimant.

Substantiating the amount of duties paid on eligible wool products imported in calendar year 1999 where the manufacturer is the importer

In the case of a manufacturer who is the importer of the eligible wool products imported in calendar year 1999, it is proposed that the letter of intent set forth the total amount of duties actually paid by

the importing-manufacturer on such merchandise. The prospective claimant must attach to the letter of intent a list of relevant entry summary numbers that substantiates this amount. The importing-manufacturer may not list any entry summary number that did not liquidate under the HTSUS subheadings that provide a basis for a wool duty refund.

Substantiating the amount of duties paid on worsted wool fabric imported in calendar year 1999 where the manufacturer is not the importer, but relevant entry summary information is available

In the case of a manufacturer who is not the importer of worsted wool fabric imported in calendar year 1999, it is proposed that the manufacturer's letter of intent must identify the importer(s) or supplier(s) who sold such fabric to the manufacturer. It is further proposed that the non-importing manufacturer must attach to the letter of intent copies of all relevant invoices, a completed Customs Form (CF) 5106 – Importer ID Input Record (for purposes of administering the duty refund), and a signed affidavit that states that the manufacturer purchased the imported worsted wool fabric from an identified importer(s), or from an identified supplier(s) who has provided the manufacturer with invoices or other substantiating documentation that establishes that the identified supplier(s) purchased such fabric from the identified importer(s). The manufacturer's signed affidavit must state that either the importer of the worsted wool fabric has agreed to provide the relevant entry summary numbers directly to the manufacturer, in which case the relevant entry summary numbers will be attached to the manufacturer's signed affidavit, or the importer has agreed to submit the relevant entry summary information directly to Customs as an attachment to the importer's signed affidavit.

Required content of an importer's signed affidavit in support of a non-importing manufacturer's letter of intent

If an importer chooses to assist in the substantiation of a manufacturer's letter of intent, and elects to submit the relevant entry summary numbers directly to Customs, it is proposed that the importer must submit such information as an attachment to a signed affidavit. The attached entry summary numbers must substantiate the amount of fabric sold to the identified manufacturer, as evidenced by the manufacturer's submitted invoices, and the importer must state that no entry summary number has been listed that did not liquidate under HTSUS subheadings 5112.11.20 or 5112.19.90. The importer's signed affidavit must attest to the fact that the importer sold worsted wool fabric, of a kind described in HTSUS subheadings 5112.11.20 or 5112.19.90, and imported in calendar year 1999, either directly to the identified manufacturer or to the manufacturer through an identified third-party supplier.

Substantiating the amount of duties paid on worsted wool fabric imported in calendar year 1999 where the manufacturer is not the importer, and entry summary information is not available

Where a manufacturer is the purchaser, but not the importer, of worsted wool fabric of the kind imported in calendar year 1999 and described in HTSUS subheadings 5112.11.20 or 5112.19.90, and the importer of such fabric is unable or unwilling to provide the relevant entry summary numbers to either the manufacturer or Customs, Customs is aware that it may be difficult for the manufacturer to reconstruct the amount of duties actually paid on such imports. Accordingly, it is proposed that in such circumstances a non-importing manufacturer may attempt to substantiate the amount of duties paid on calendar year 1999 imports of worsted wool fabric by submitting relevant calendar year 1999 invoices to Customs. Although early year 1999 invoices may describe fabric that was actually imported in calendar year 1998, and, conversely, some worsted wool fabric that was actually imported in calendar year 1999 may be described in invoices dated year 2000 and later, Customs is of the view that limiting acceptable invoices for purposes of substantiating the amount of duties paid in calendar year 1999 to those invoices that are dated calendar year 1999 represents a reasonable compromise. An invoice used for this purpose must relate to fabric that is of the kind described in HTSUS subheadings 5112.11.20 or 5112.19.90. Additionally, it is proposed that where an invoice is used to substantiate the amount of duties paid on worsted wool fabric imported in calendar year 1999, an adjustment must be made to the monetary amount reflected in the invoice as that amount includes the fabric seller's mark-up, each supplier's mark-up in a distribution chain, as well as the duties already paid upon importation of the fabric. To take this into account Customs proposes, and is seeking public comment on, the use of the following formula to deduct mark-up and calculate the duties paid on the adjusted invoice amount:

(1) Customs will deduct 10 percent (to reflect seller's imputed mark-up) from any invoice amount used to substantiate the amount of duties paid on worsted wool fabric imported in calendar year 1999;
(2) Customs will divide the resulting adjusted invoice amount by 100% plus the duty rate (the 1999 *ad valorem* duty rate of 30.6% applicable to subheadings 5112.11.20 and 5112.19.90) to back out the duty and determine the appraised value; and
(3) Customs will then multiply the appraised value times the 30.6% duty rate.

Although this formula is offered as a reasonable means of calculating the amount of duties paid on an invoice amount, there remain several variables that may substantially alter the accuracy of this formula. First, it is noted that there is no definitive way to establish

that the fabric described in an invoice was, in fact, imported in calendar year 1999. Second, the 10% figure (a figure offered to Customs as reasonable by the trade) may be too low or, in the event there are several intermediary fabric sellers, there may be more than one mark-up reflected in the invoice amount. To ensure that these variables do not result in an artificially high baseline from which the calendar year 2000, 2001 and 2002 duty refunds are calculated, Customs will use ACS to determine importer-specific aggregate 1999 duty payments on HTSUS subheadings 5112.11.20 and 5112.19.90. Customs will then compare the ACS determination with the importer-specific aggregates of all claimants. If the amount claimed exceeds the ACS amount, Customs will adjust the formula used for claims based on invoices associated with that importer. For example, if several manufacturers source their imported worsted wool fabric from the same importer, the aggregate amount claimed by those manufacturers as their 1999 duty payments may not exceed the aggregate amount paid by that importer in 1999. If the aggregate amount claimed for that importer exceeds the ACS aggregate, it is proposed that the 10% deduction, described in step 1 of the duty computation formula discussed above, for all invoice amounts associated with that importer which were used to substantiate the amount of duties paid in calendar year 1999 will be increased on a *pro rata* basis to ensure that aggregate claims do not exceed the ACS-generated amount. In this event, amounts substantiated by entry summary numbers will not be reduced. Thus, if one manufacturer bases his letter of intent on entry summaries associated with an importer and two other manufacturers, whose source is the same importer, base their letters of intent on invoices, and ACS indicates 1999 duty payments are less than the total ascribed to that importer in letters of intent, the 1999 duty amounts claimed by the manufacturer whose letter of intent is based on entry summaries will not be affected. However, the duty amounts claimed by the other two manufacturers will be reduced on a *pro rata* basis.

Invoices may only be used to substantiate the amount of duties paid on worsted wool fabric in calendar year 1999, and may not be used to substantiate duties paid in claim years 2000, 2001 and 2002

Section 505(d) requires a wool duty refund claimant to properly identify and make appropriate claim to Customs for each entry used to substantiate the amount of duties paid on eligible wool products in each of calendar claim years 2000, 2001 and 2002. Accordingly, invoices may not be used to substantiate the amount of duties paid in each of these claim years, and may only be used for purposes of substantiating the amount of duties paid on worsted wool fabric imported in calendar year 1999 where the relevant entry summary information is not available.

Time to file letter of intent

It is proposed that a prospective wool duty refund claimant's letter

of intent, including all related substantiating documentation and, where necessary, the importer's signed affidavit with attached entry summary information, must be received by Customs no later than January 31, 2001, unless this date is extended upon due notice in the **Federal Register**.

Claimant's individual share of the total amount of duties eligible to be refunded

Customs will calculate each claimant's individual share of the total amount of duties eligible to be refunded based on submitted documentation that substantiates, to Customs satisfaction, the amount of duties paid by each claimant, or importer on whom the claimant relies, on eligible wool products imported in calendar year 1999. One-third of a claimant's individual share will constitute the maximum amount that claimant may receive in each of calendar years 2000, 2001, and 2002.

Wool duty refund verification letter

It is proposed that Customs will issue a wool duty refund verification letter to each prospective claimant that timely and completely substantiates, to Customs satisfaction, the amount of duties paid on eligible wool products imported in calendar year 1999. The verification letter will set forth the prospective claimant's Customs identification number for purposes of the wool duty refund program, the ACS-generated amount of duties paid on calendar year 1999 imports of the eligible wool products per importer that provide the basis for the prospective claimant's wool duty refund claim, the maximum amount of wool duty refund that the prospective claimant is eligible to receive in each of calendar years 2000, 2001, and 2002, and, where the aggregate amount of eligible individual refunds exceeds the relevant ACS-generated amount, the *pro rata* deduction used to adjust the maximum amount of wool duty refund that the prospective claimant will be eligible to receive in each of the claim years.

Customs proposes to issue a verification letter to the manufacturer no later than 30 calendar days from the date the manufacturer's letter of intent, and all required supporting documentation, is received by Customs, unless this date is extended upon due notice in the **Federal Register**.

Procedures for filing a section 505 wool duty refund claim

As section 505(d) requires claimants to identify each entry that provides the basis for a wool duty refund, it is proposed that all claims for a refund of duties paid on imports of eligible wool products in each of calendar years 2000, 2001, and 2002, must be substantiated by a list of entry summary numbers for that merchandise. No wool duty refunds will be issued to a claimant until all entry summary numbers submitted to Customs for purposes of substantiating the claim are liquidated.

Filing a wool duty refund claim where the manufacturer is the importer

To file a wool duty refund claim, it is proposed that a manufacturer who is the importer of eligible wool products in calendar years 2000, 2001, or 2002, provide Customs with a copy of the verification letter the manufacturer received from Customs and a signed affidavit that contains the following information:

(1) A statement that the affiant is a U.S. manufacturer of certain wool products in the current calendar claim year;

(2) A statement that the affiant actually paid duties on imports of eligible wool products in the current calendar claim year;

(3) A statement as to the total amount of duties paid on such merchandise in the current calendar claim year;

(4) A list of current calendar claim year entry summary numbers, set forth as an attachment to the signed affidavit, that substantiates the total amount of duties paid as set forth in paragraph (3) above, and does not exceed the affiant's individual share of duties eligible to be refunded as set forth in the affiant's verification letter;

(5) A statement that the manufacturer has not listed any entry summary in paragraph (4) above that has had 99% or more of the amount of duties paid on that entry refunded pursuant to any refund claim authorized by law; and

(6) A list of entry summary numbers, set forth in paragraph (4) above, that is, or may become, subject to any outstanding drawback claim, protest, or any other refund claim authorized by law.

Filing a wool duty refund claim where the manufacturer is not the importer

Where a manufacturer of men's or boys' suits, suit-type jackets, or trousers of worsted wool fabric, of the kind described in HTSUS subheadings 5112.11.20, 5112.19.90, 9902.51.11 or 9902.51.12, is not the importer of such fabric, the manufacturer may not possess the requisite entry summary numbers necessary to substantiate a wool duty refund claim. In such situations, it is proposed that the non-importing manufacturer arrange for the importer of such fabric to supply the relevant entry summary numbers to Customs. The importer may either submit the relevant entry summary numbers directly to the non-importing manufacturer, who will attach this information to the manufacturer's signed affidavit, or the importer may submit this information directly to Customs as an attachment to the importer's signed affidavit.

If the importer provides the relevant entry summary numbers directly to the non-importing manufacturer, it is proposed that the manufacturer substantiate a claim for a wool duty refund by submitting to Customs a copy of the verification letter the manufacturer received from Customs, copies of all relevant invoices, and a signed

affidavit that contains the following information:

(1) A statement that the affiant is a U.S. manufacturer, in the current calendar year, of men's or boys' suits, suit-type jackets, or trousers, of imported worsted wool of the kind described in HTSUS subheadings 5112.11.20, 5112.19.90, 9902.51.11, or 9902.51.12;

(2) A statement that the affiant is not the importer, in the current calendar claim year, of imported worsted wool fabric of the kind described in paragraph (1) above;

(3) A statement that the affiant purchased imported worsted wool fabric of the kind described in paragraph (1) above from an identified importer(s) or from an identified supplier(s), and copies of relevant invoices are attached;

(4) Where the affiant purchased imported worsted wool fabric of the kind described in paragraph (1) above, a statement that the affiant has substantiating documentation that establishes that such fabric was imported by the identified importer(s); and

(5) A list of relevant entry summary numbers that substantiates the amount of duties paid in the current calendar year on worsted wool fabric of the kind described in paragraph (1) above, that is identified in the manufacturer's submitted invoice(s).

If the importer provides the relevant entry summary numbers directly to Customs as an attachment to the importer's signed affidavit, it is proposed that the manufacturer substantiate a claim for a wool duty refund in the same manner as described above, except that instead of submitting the relevant entry summary numbers to Customs, the non-importing manufacturer must state in the affidavit that the identified importer has agreed to submit this information directly to Customs as an attachment to the importer's signed affidavit. Unless Customs timely receives signed affidavits containing the requisite substantiating information from both the manufacturer and, where applicable, the importer, the manufacturer's claim for a wool duty refund pursuant to section 505 will be deemed incomplete and denied by Customs.

Required content of an importer's signed affidavit in support of a non-importing manufacturer's wool duty refund claim

If an importer chooses to assist in the substantiation of a non-importing manufacturer's wool duty refund claim by submitting the relevant entry summary numbers directly to Customs as an attachment to the importer's signed affidavit, the affidavit must contain the following information:

(1) A statement that the importer actually paid duties in the current calendar claim year on worsted wool fabric of the kind de-

scribed in HTSUS subheadings 5112.11.20, 5112.19.90, 9902.51.11 or 9902.51.12;

(2) A statement that the importer sold worsted wool fabric of the kind described in paragraph (1) above to the identified manufacturer or to an identified supplier(s);

(3) A list of relevant entry summary numbers for fabric of the kind described in paragraph (1), in an amount that substantiates that amount of fabric sold to the manufacturer, as evidenced by the manufacturer's invoices;

(4) A list of any entry summary numbers in paragraph (3) above that has had 99% or more of the amount of duties paid on that entry refunded pursuant to any refund claim authorized by law; and

(5) A list of entry summary numbers, set forth in paragraph (3) above, that is, or may become, subject to any outstanding drawback claim, protest, or any other refund claim authorized by law.

Timely and complete wool duty refund claims

In order for a manufacturer's wool duty refund claim to be deemed timely and complete, Customs must receive the substantiating documentation proposed above, including, where applicable, the importer's signed affidavit with relevant attachments, no later than 90 calendar days from the last day of the calendar year in which duties were paid for which a refund is being sought.

Section 505 wool duty refund claims and other claims for refunds or drawback

Once an entry summary has been used to provide the basis for a duty refund claim pursuant to section 505, and the entire amount of duties paid on eligible wool products is refunded to the claimant, it is proposed that Customs will deny any subsequent claim for drawback of the same duties, or any other claim for a refund of those duties. However, if an entry summary has been used to substantiate a claim for a section 505 duty refund, and an amount in duties paid on that entry has not been refunded, it is proposed that the remaining amount may be eligible for drawback or any other refund claim authorized by law. Conversely, if an entry summary has been used to substantiate a drawback claim, or any refund claim authorized by law, and an amount in duties paid on that entry has not been refunded, it is proposed that the remaining amount may be eligible for a subsequent section 505 duty refund claim.

In situations where an entry summary is eligible to substantiate a section 505 claim, as well as a claim for drawback or any other claim authorized by law, it is proposed that the claim that is received first by Customs, and deemed timely and complete, will be processed first.

COMMENTS

Before adopting this proposal as a final rule, consideration will be given to any written comments timely submitted to Customs, including comments on the clarity of this interim rule and how it may be made easier to understand. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), §1.4 of the Treasury Department Regulations (31 CFR 1.4), and §103.11(b) of the Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9 a.m. and 4:30 p.m. at the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, 1300 Pennsylvania Avenue, N.W., 3rd Floor, Washington, D.C.

THE REGULATORY FLEXIBILITY ACT AND EXECUTIVE ORDER 12866

These proposed regulatory changes implement the terms of section 505 of the Trade and Development Act of 2000, which went into effect May 18, 2000. Because these proposed changes benefit the public by allowing eligible claimants to receive a refund of duties paid on imports of certain wool products, pursuant to the provisions of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, it is certified that, if adopted, the proposed amendments will not have a significant impact on a substantial number of small entities. Further, these proposed amendments do not meet the criteria for a "significant regulatory action" as specified in E.O. 12866.

PAPERWORK REDUCTION ACT

The collection of information contained in this notice of proposed rulemaking has been reviewed under the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507) and, pending receipt and evaluation of public comments, approved by the Office of Management and Budget (OMB) under control number 1515-0227. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB.

Comments on the collection of information should be sent to OMB, Attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503. A copy should also be sent to the Regulations Branch at the address set forth above. Comments should be submitted within the time frame that comments are due regarding the substance of the proposal.

Comments are invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(b) The accuracy of the agency's estimate of the information collec-

tion burden;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the information collection burden on responents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information.

The collection of information in this proposed rule is in § 10.184. The information requested is necessary to implement the terms of section 505 of the Trade and Development Act of 2000, whereby Customs is authorized to substantiate and process claims for refunds of duties paid in each of calendar years 2000, 2001, and 2002, on imports of certain wool products. The collection of information is required in order for a claimant to obtain the duty refund. The likely respondents are business organizations who seek a refund of duties paid on imports of eligible wool products in each of calendar years 2000, 2001, and 2002.

Estimated total annual reporting and / or recordkeeping burden: 8,600 hours.

Estimated average annual burden per respondent / recordkeeper: 290 hours.

Estimated number of respondents and / or recordkeepers: 30.

Estimated annual frequency of response: 2.

If this proposal is adopted, part 178 of the Customs Regulations (19 CFR part 178), which lists the information collections contained in the regulations and control numbers assigned by OMB, will be amended accordingly

DRAFTING INFORMATION

The principal author of this document was Suzanne Kingsbury, Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

LIST OF SUBJECTS

19 CFR Part 10

Customs duties and inspection, Imports, Reporting and recordkeeping requirements, Trade agreements.

PROPOSED AMENDMENT TO THE REGULATIONS

For the reasons stated above, it is proposed to amend part 10 of the Customs Regulations (19 CFR part 10) as set forth below.

PART 10 – ARTICLES CONDITIONALLY FREE, SUBJECT TO A REDUCED RATE, ETC.

1. The general authority citation for part 10 is revised, and a new specific authority citation for § 10.184 is added, to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 22, Harmonized Tariff Schedule of the United States), 1321, 1481, 1484, 1498, 1508, 1623, 1624, 3314.

* * * * *

Section 10.184 is also issued under Sec. 505, Pub. L. 106-200, 114 Stat. 251;

* * * * *

2. A new center heading and a new §10.184 is added to read as follows:

WOOL REFUNDS

§ 10.184 Refund of duties on certain wool imports.

(a) *General.* Section 505 of Title V of Pub. L. 106-200 (114 Stat. 251), entitled the Trade and Development Act of 2000, authorizes the President to refund duties paid on imports of eligible wool products. The statute permits eligible importing-manufacturers and, in certain circumstances, manufacturers who are not importers, to apply for a refund of duties paid on imports of eligible wool products in each of three succeeding years. Claimants are eligible for a refund of duties paid on imports of eligible wool products in each of calendar years 2000, 2001 and 2002, limited to an amount not to exceed one-third of the duties paid on such wool products imported in calendar year 1999. This section sets forth the legal requirements and procedures that apply for purposes of obtaining this duty refund.

(b) *Eligible wool products.* For purposes for this section, the term "eligible wool product" means an imported wool product described under a Harmonized Tariff Schedule of the United States subheading listed under paragraph (c) of this section, relevant to a manufacturer of the particular wool products specified in paragraph (c).

(c) *Refunds authorized by section 505* – (1) *Worsted wool fabric.* In each of calendar years 2000, 2001, and 2002, a manufacturer of men's or boys' suits, suit-type jackets, or trousers, of imported worsted wool fabric of the kind described in HTSUS subheadings 5112.11.20, 5112.19.90, 9902.51.11 or 9902.51.12, is eligible to claim a refund of the duties paid on entries of such fabric that were purchased by the manufacturer. The amount of duties eligible to be refunded to the manufacturer in each of these calendar years is limited to an amount not to exceed one-third of the amount of duties paid on calendar year 1999 imports of such worsted wool fabrics that were purchased by the manufacturer. A broker or other individual acting on behalf of the

manufacturer is ineligible to claim a duty refund.

(2) *Wool yarn.* A manufacturer of worsted wool fabric, who imports wool yarn of the kind described in HTSUS subheadings 5107.10.00 and 9902.51.13, is eligible to claim a limited refund of the duties paid by the manufacturer on entries of such wool yarn in each of calendar years 2000, 2001, and 2002. The amount of duties eligible to be refunded in each of these calendar years is limited to an amount not to exceed one-third of the amount of duties paid by the importing-manufacturer on such wool yarn imported in calendar year 1999.

(3) *Wool fiber and wool top.* A manufacturer of wool yarn or wool fabric, who imports wool fiber or wool top of the kind described in HTSUS subheadings 5101.11, 5101.19, 5101.21, 5101.29, 5101.30, 5103.10, 5103.20, 5104.00, 5105.21, 5105.29, or 9902.51.14, is eligible to claim a limited refund of the duties paid by the manufacturer on entries of such wool fiber or wool top in each of calendar years 2000, 2001, and 2002. The amount of duties eligible to be refunded in each of these calendar years is limited to an amount not to exceed one-third of the amount of duties paid by the importing-manufacturer on such wool yarn imported in calendar year 1999.

(d) *Manufacturer's letter of intent to file a claim for a wool duty refund.* A manufacturer that expects to file a wool duty refund claim in calendar years 2000, 2001, and 2002, pursuant to the terms of paragraph (c) of this section, must first file with Customs a letter of intent to that effect. A manufacturer's letter of intent must substantiate, to Customs satisfaction, the amount of duties paid on eligible wool products imported in calendar year 1999.

(1) *Documentation required where the manufacturer is the importer.* Where a manufacturer is the importer of the eligible wool products imported in calendar year 1999, a letter of intent to file a wool duty refund claim must be signed by the manufacturer or a knowledgeable authorized officer or employee of the manufacturer and must state that, to the best of the signer's knowledge and belief, the information contained in the letter is accurate and truthful. The letter of intent must contain the following information:

(i) A statement of the total amount of duties paid by the importing-manufacturer on eligible wool products imported in calendar year 1999;

(ii) A list of relevant entry summary numbers, set forth as an attachment in either a paper or an electronic format (the latter submitted to Customs on diskette), that substantiates the amount set forth in paragraph (d)(1)(i) of this section; and

(iii) A statement that no entry summary has been listed in paragraph (d)(1)(ii) of this section that did not liquidate under the HTSUS subheadings that provide a basis for a wool duty refund.

(2) *Documentation required where the manufacturer is not the importer, but the manufacturer possesses the relevant entry summary numbers.* Where a manufacturer described in paragraph (c)(1) of this section is not the calendar year 1999 importer of worsted wool fabric

of the kind described in HTSUS subheadings 5112.11.20 or 5112.19.90, but possesses the relevant entry summary numbers, a letter of intent to file a wool duty refund claim must be submitted to Customs and signed by the non-importing manufacturer or a knowledgeable authorized officer or employee of the manufacturer. The letter of intent must state that, to the best of the signer's knowledge and belief, the information contained in the letter is accurate and truthful.

(i) The non-importing manufacturer's letter of intent must contain the following information:

(A) A statement as to the identity of the importer(s) or supplier(s) who sold imported worsted wool fabric of the kind described in HTSUS subheadings 5512.11.20 or 5112.19.90 to the manufacturer;

(B) Copies of all relevant invoices, set forth as an attachment, that demonstrate that the manufacturer purchased imported worsted wool fabric of the kind described in paragraph (d)(2)(i)(A) of this section from an identified importer(s) or identified supplier(s) and that establish, where applicable, that the identified supplier(s) purchased such fabric from the identified importer(s);

(C) A completed Customs Form (CF) 5106 – Importer ID Input Record, set forth as an attachment; and

(D) A signed affidavit, set forth as an attachment, that contains the following information:

(1) A statement that the affiant is a U.S. manufacturer of men's or boys' suits, suit-type jackets, or trousers, of imported worsted wool of the kind described in HTSUS subheadings 5112.11.20, 5112.19.90, 9902.51.11 or 9902.51.12;

(2) A statement that the affiant was not the importer in calendar year 1999 of worsted wool fabric of the kind described in HTSUS subheadings 5112.11.20 or 5112.19.90;

(3) A statement as to the quantity of imported worsted wool fabric of the kind described in paragraph (d)(2)(i)(D)*(2)* of this section that the affiant purchased from an identified importer(s) or from an identified supplier(s), with copies of relevant invoices attached;

(4) If the affiant purchased fabric of the kind described in paragraph (d)(2)(i)(D)*(2)* of this section from an identified supplier, a statement that the affiant has been provided with substantiating documentation that establishes that the subject fabric was imported by the identified importer; and

(5) A statement by the affiant that the identified importer(s) has provided a list of relevant entry summary numbers directly to the affiant that substantiates the amount of duties paid in calendar year 1999 on the fabric identified in the submitted invoices, and such information is set forth as an attachment; or

(6) A statement by the affiant that the identified importer has agreed to submit a signed affidavit directly to Customs with the relevant entry summary numbers attached.

(ii) A non-importing manufacturer's affidavit to substantiate the amount of duties paid on worsted wool fabric imported in calendar

year 1999 must be signed by the manufacturer or a knowledgeable authorized officer or employee of the manufacturer, and be submitted to Customs in the following format:

Non-Importing Manufacturer's Affidavit in Support of a Letter of Intent to File a Wool Duty Refund Claim (where the manufacturer possesses the relevant entry summary numbers)

1. The undersigned, (*name of manufacturer*), is a U.S. manufacturer of men's or boys' suits, suit-type jackets, or trousers, of imported worsted wool fabric of the kind described in HTSUS subheadings 5112.11.20, 5112.19.90, 9902.51.11 or 9902.51.12;
2. The undersigned was not the importer in calendar year 1999 of worsted wool fabric of the kind described in item (1) above;
3. The undersigned purchased (*specify quantity*) of imported worsted wool fabric of the kind described in item (1) above from (*name of importer*) or from a supplier (*name of supplier*), and copies of the relevant invoices are attached;
4. Where the undersigned purchased imported worsted wool fabric of the kind described in item (1) above from (*name of supplier*), the undersigned has substantiating documentation that establishes that such fabric was imported by (*name of importer*);

5(a). Attached is a list of relevant entry summary numbers, provided directly to the undersigned by (*name of importer*), that substantiates the amount of duties paid in calendar year 1999 on the fabric identified in the attached invoices; or

5(b). The importer, (*name of importer*), has agreed to submit a signed affidavit directly to Customs that attests to the fact that the importer sold imported worsted wool fabric of the kind described in item (1) above to the undersigned or to identified supplier(s), and to attach a list of the relevant entry summary numbers that substantiates the amount of duties paid in calendar year 1999 on the fabric identified in the attached invoices; and

6. The undersigned attests that the information set forth in this affidavit is true and accurate to the best of the affiant's knowl)edge and belief.

(iii) If an importer assists in the substantiation of a non-importing manufacturer's letter of intent by submitting relevant entry summary numbers directly to Customs as an attachment to a signed affidavit, the importer's affidavit must be signed by the importer or a knowledgeable officer or employee of the importer and must state that, to the best of the affiant's knowledge and belief, the information contained in the affidavit is accurate and truthful. The importer's signed affidavit must contain the following information:

(A) A statement that the affiant paid duties on worsted wool fabric of the kind described in HTSUS subheadings 5112.11.20 or 5112.19.90, imported in calendar year 1999;

(B) Identification of the claimant, or supplier to the claimant, to whom the affiant sold imported worsted wool fabric of the kind described in paragraph (d)(2)(iii)(A) of this section;

(C) A list of relevant entry summary numbers for worsted wool fabric of the kind described in paragraph (d)(2)(iii)(A) of this section, imported in calendar year 1999, set forth as an attachment in either a paper or an electronic format (the latter submitted to Customs on diskette), that substantiates the amount of duty paid in calendar year 1999 on the fabric sold to the identified claimant or identified supplier, as evidenced by the claimant's invoices; and

(D) A statement that the importer has not listed any entry summary in paragraph (d)(2)(iii)(C) of this section that did not liquidate under HTSUS subheadings 5112.11.20 or 5112.19.90.

(iv) The importer's affidavit in support of a non-importing manufacturer's letter of intent to claim a wool duty refund must be signed by the importer or a knowledgeable officer or employee of the importer, and be submitted to Customs in the following format:

Importer's Affidavit in Support of a Non-Importing Manufacturer's Letter of Intent to Claim a Wool Duty Refund

1. The undersigned, (*name of importer*), is an importer who paid duties on worsted wool fabric of the kind described in HTSUS subheadings 5112.11.20 or 5112.19.90, imported in calendar year 1999;
2. The undersigned sold worsted wool fabric of the kind described in item (1) above to a manufacturer identified as (*name of manufacturer*) or to a supplier(s) identified as (*name of supplier*);
3. Attached is a list of relevant entry summary numbers for worsted wool fabric of the kind described in item (1) above that substantiates the amount of duties paid in calendar year 1999 on the fabric that was sold to (*name of manufacturer*) or to (*name of supplier(s)*) by the undersigned;
4. The undersigned has not listed any entry summary in item (3) above that did not liquidate under HTSUS subheadings 5512.11.20 or 5112.11.90; and
5. The undersigned attests that the information set forth in this affidavit is true and accurate to the best of the affiant's knowledge and belief.

(3) *Documentation required where the manufacturer is not the importer and the manufacturer does not possess the relevant entry summary numbers.* Where a manufacturer described in paragraph (c)(1) of this section is not the calendar year 1999 importer of worsted wool

fabric of the kind described in HTSUS subheadings 5112.11.20 or 5112.19.90, and does not possess the relevant entry summary numbers, a letter of intent to file a wool duty refund claim must be submitted to Customs and signed by the non-importing manufacturer or a knowledgeable authorized officer or employee of the manufacturer. The letter of intent must state that, to the best of the signer's knowledge and belief, the information contained in the letter is accurate and truthful.

(i) The non-importing manufacturer's letter of intent, where the manufacturer does not possess the relevant entry summary numbers, must contain the following information:

(A) A statement as to the identity of the importer(s) or supplier(s) who sold imported worsted wool fabric of the kind described in HTSUS subheadings 5512.11.20 or 5112.19.90 to the non-importing manufacturer;

(B) Copies of all relevant calendar year 1999 invoices, set forth as an attachment, that demonstrate that the non-importing manufacturer purchased imported worsted wool fabric of the kind described in paragraph (d)(2)(i)(A) of this section from an identified importer(s) or identified supplier(s);

(C) A statement that if the non-importing manufacturer purchased imported worsted wool fabric of the kind described in paragraph (d)(2)(i)(A) of this section from an identified supplier, the manufacturer has substantiating documentation that establishes that such fabric was imported by the identified importer;

(D) A completed Customs Form (CF) 5106 – Importer ID Input Record, set forth as an attachment; and

(E) A signed affidavit, set forth as an attachment, that contains the following information:

(1) A statement that the affiant is a U.S. manufacturer of men's or boys' suits, suit-type jackets, or trousers, of imported worsted wool of the kind described in HTSUS subheadings 5112.11.20, 5112.19.90, 9902.51.11 or 9902.51.12;

(2) A statement that the affiant was not the importer in calendar year 1999 of worsted wool fabric of the kind described in HTSUS subheadings 5112.11.20 or 5112.19.90;

(3) A statement of the quantity of imported worsted wool fabric of the kind described in paragraph (d)(3)(i)(D)(2) of this section that the affiant purchased from an identified importer(s) or from an identified supplier(s), with copies of the relevant invoices attached;

(4) A statement that where the affiant purchased imported worsted wool fabric of the kind described in paragraph (d)(3)(i)(D)(2) of this section from an identified supplier, the affiant has substantiating documentation that establishes that such fabric was imported by the identified importer; and

(5) A statement by the affiant that a good faith effort was made to contact the identified importer and request relevant entry summary numbers that substantiate the amount of duties paid in calendar year 1999 on fabric identified in the submitted invoices, but the identified

importer is unable or unwilling to provide such assistance.

(ii) A non-importing manufacturer's affidavit to substantiate the amount of duties paid by the importer on worsted wool fabric imported in calendar year 1999, where no entry summary numbers are available, must be signed by the manufacturer or a knowledgeable authorized officer or employee of the manufacturer, and be submitted to Customs in the following format:

Non-Importing Manufacturer's Affidavit in Support of a Letter of Intent to File a Wool Duty Refund Claim (where the manufacturer does not possess the relevant entry summary numbers)

1. The undersigned, (*name of manufacturer*), is a U.S. manufacturer of men's or boys' suits, suit-type jackets, or trousers, of imported worsted wool fabric of the kind described in HTSUS subheadings 5112.11.20, 5112.19.90, 9902.51.11 or 9902.51.12;
2. The undersigned was not the importer in calendar year 1999 of worsted wool fabric of the kind described in item (1) above;
3. The undersigned purchased (*specify quantity*) of imported worsted wool fabric of the kind described in item (1) above from (*name of importer*) or from a supplier (*name of supplier*), and copies of relevant invoices are attached;
4. If the undersigned has purchased imported worsted wool fabric of the kind described in item (1) above from (*name of supplier*), the undersigned has substantiating documentation that establishes that such fabric was imported by (*name of importer*);
5. The undersigned attests that a good faith effort was made to contact the identified importer(s) and request that relevant entry summary numbers be provided to either the undersigned or directly to Customs that substantiate the amount of duties paid in calendar year 1999 on fabric identified in the submitted invoices, but the identified importer is unable or unwilling to provide such assistance.
6. The undersigned attests that the information set forth in this affidavit is true and accurate to the best of the affiant's knowledge and belief.

(4) *Time to file a letter of intent.* A manufacturer's letter of intent to file a wool duty refund claim, including all attachments and, where applicable, the importer's signed affidavit in support of the manufacturer's letter of intent, must be received by Customs no later than January 31, 2001, unless this date is extended upon due notice in the **Federal Register**.

(e) *Customs verification letter.* Customs will issue to a prospective claimant a written verification letter within 30 calendar days from the date Customs receives a timely and complete letter of intent that substantiates, to Customs satisfaction, the amount of duties paid on

eligible wool products imported in calendar year 1999. The amount of potential duty refund will be based on the quantity of eligible wool products that was imported by the prospective claimant or, where the prospective claimant was not the importer, purchased by the prospective claimant (as indicated by submitted invoices). If entry summary numbers are used to substantiate the amount of duties paid on eligible wool products in calendar year 1999, the potential refund amount will be limited to the amount of duties paid on such entry summaries that is attributable to that quantity of eligible wool products. If invoices are used to substantiate the amount of duties paid on worsted wool fabrics in calendar year 1999, the amount of duties will be determined by deducting 10 percent from the invoice amounts, dividing the resulting adjusted invoice amounts by 100% plus the duty rate (30.6%) to back out the duty, and then multiplying that amount times the duty rate (30.6%). If the aggregate amount of duties attributable to an importer exceeds the amount of duties paid by that importer in calendar year 1999, as indicated by ACS, an adjustment will be made to those claimants requiring use of the invoice formula. The percentage deducted from the invoice amounts for those claimants will be increased on a *pro rata* basis to ensure that the aggregate amount to be refunded does not exceed the ACS amount. Refund amounts substantiated by entry summary numbers will not be reduced. A letter of verification will set forth the following information:

(1) The prospective claimant's claim identification number;

(2) The ACS-generated amount of duties paid on calendar year 1999 imports of the eligible wool products per importer that provide the basis for the prospective claimant's wool duty refund claim;

(3) The maximum amount of wool duty refund that the individual prospective claimant will be eligible to receive in each of calendar years 2000, 2001, and 2002; and

(4) Where invoices are used to substantiate the amount of duties paid on worsted wool fabric in calendar year 1999, the percentage that was deducted from the invoice amounts, with accompanying explanation.

(f) *Eligibility criteria to claim a duty refund in calendar years 2000, 2001, and 2002.* To be eligible to claim a refund of duties paid on imports of certain wool products in calendar years 2000, 2001, and 2002, a claimant must be in receipt of a claim verification letter from Customs. Additionally, in each such calendar year a claimant must be:

(1) A U.S. manufacturer of men's or boys' suits, suit-type jackets, or trousers, of imported worsted wool fabric of the kind described in HTSUS subheadings 5112.11.20, 5112.19.90, 9902.51.11 or 9902.51.12, for which duties were paid in that year;

(2) A U.S. manufacturer of worsted wool fabric who paid duties in that year on imported wool yarn of the kind described in HTSUS subheadings 5107.10.00 or 9902.51.13; or

(3) A U.S. manufacturer of wool yarn or wool fabric who paid duties in that year on imported wool fiber or wool top of the kind described

in HTSUS subheadings 5101.11, 5101.19, 5101.21, 5101.29, 5101.30, 5103.10, 5103.20, 5104.00, 5105.21, 5105.29 or 9902.51.14.

(g) *Procedures for filing a claim* – (1) *Time to file.* An eligible claimant may submit to Customs, once per calendar year, a request for a refund of duties paid on imports of eligible wool products in each of calendar years 2000, 2001, and 2002. A claim may be amended within 30 calendar days from the date of the original submission or, if Customs has notified the claimant in writing that the claim is insufficient to support a duty refund claim or is otherwise defective, within 30 calendar days from the date of the Customs notification. All claims for a wool duty refund, whether original or amended, must be received by Customs within 90 calendar days from the last day of the calendar year for which a wool duty refund is being sought.

(2) *Place to file.* A claim for a refund of duties paid on imports of eligible wool products must be submitted to: U.S. Customs Service, Wool Refund Claim, Residual Liquidation and Protest Branch, Rm. 761, 6 World Trade Center, New York, N.Y. 10048-0945.

(3) *Documentation.* (i) *Where the manufacturer is the importer.* To file a wool duty refund claim, an importing-manufacturer must provide Customs with a copy of the verification letter the claimant received from Customs and an affidavit, signed by the manufacturer or a knowledgeable officer or employee of the manufacturer, that contains the following information:

(A) A statement that the affiant is a U.S. manufacturer of the kind described in either paragraphs (f)(1), (f)(2) or (f)(3) of this section, in the current calendar claim year;

(B) A statement of the total amount of duties paid by the affiant in that year on eligible wool products;

(C) The total amount of duty refund being claimed;

(D) A list of relevant entry summary numbers, set forth as an attachment and submitted to Customs in either a paper or an electronic format (the latter on diskette), that substantiates the amount of duties for which a refund is being claimed in paragraph (g)(3)(i)(C) of this section, and does not exceed the affiant's share of duties eligible to be refunded as set forth in the attached verification letter;

(E) A statement that no entry summary has been listed in paragraph (g)(3)(i)(D) of this section that has already had 99% or more of the amount of duties paid on that entry refunded pursuant to any refund claim authorized by law; and

(F) A statement that identifies, if applicable, any entry summary listed in paragraph (g)(3)(i)(D) of this section that is, or may become, subject to an outstanding drawback claim, protest, or any other refund claim authorized by law.

(ii) *Form of affidavit.* An importing-manufacturer's signed affidavit to substantiate a wool duty refund claim in calendar years 2000, 2001, or 2002 must be signed by the manufacturer, or a knowledgeable officer or employee of the manufacturer, and be submitted to Customs in the following format:

Importing-Manufacturer's Affidavit in Support of a Claim for a Wool Duty Refund Under Section 505 of the Trade and Development Act of 2000,
for Calendar Year _____

1. The undersigned, (*name of manufacturer*), is a U.S. manufacturer of the kind described in either paragraph (f)(1) [__], (f)(2) [__] or (f)(3) [ ] [check one] of § 10.184 of the Customs Regulations (19 CFR 10.184(f), in the current calendar claim year;
2. The undersigned paid (*total amount of duties paid*) in calendar year _____ on eligible wool products;
3. The amount of wool duty refund being claimed is $_____;
4. Attached is a list of the relevant current claim year entry summary numbers that substantiate the amount of duty refund being claimed in item (3) above;
5. The undersigned has not listed any entry summary in item (4) above that has had 99% or more of the amount of duties paid on that entry refunded pursuant to any refund claim authorized by law;
6. The undersigned will list any entry summary in item (4) above that is, or may become, subject to an outstanding drawback claim, protest, or any other refund claim authorized by law; and
7. The undersigned attests that the information set forth in this affidavit is true and accurate to the best of the affiant's knowledge and belief.

(iii) *Where the manufacturer is not the importer.* To file a wool duty refund claim a manufacturer of men's or boys' suits, suit-type jackets, or trousers, of imported worsted wool fabric of the kind described in HSTUS subheadings 5112.11.20, 5112.19.90, 9902.51.11 or 9902.51.12, who is a purchaser but not the importer of such fabric, must provide Customs with a copy of the verification letter the claimant received from Customs and an affidavit signed by the manufacturer, or a knowledgeable officer or employee of the manufacturer, that contains the following information:

(A) A statement that the affiant is a U.S. manufacturer in the current calendar claim year of men's or boys' suits, suit-type jackets, or trousers, of imported worsted wool fabric of the kind described in HTSUS subheadings 5112.11.20, 5112.19.90, 9902.51.11 or 9902.51.12;

(B) A statement that the affiant is not the importer in the current calendar year of imported worsted wool fabric of the kind described in paragraph (g)(3)(iii)(A) above;

(C) A statement as to the quantity of imported worsted wool fabric of the kind described in paragraph (g)(3)(iii)(A) above that the affiant purchased from an identified importer(s) or from an identified supplier(s), with copies of relevant invoices attached;

(D) A statement that where the affiant purchased imported worsted wool fabric of the kind described in paragraph (g)(3)(iii)(A) above from

an identified supplier(s), the affiant has substantiating documentation that establishes that such fabric was imported by the identified importer(s);

(E) A statement by the affiant that the identified importer(s) has provided a list of relevant entry summary numbers directly to the affiant that substantiates the amount of duties paid in the current calendar claim year on the fabric identified in the submitted invoices, and such information is set forth as an attachment; or

(F) A statement by the affiant that the identified importer(s) has agreed to submit a signed affidavit directly to Customs with the relevant entry summary numbers attached, that substantiates the amount of duties paid in the current calendar claim year on the fabric identified in the submitted invoices.

(iv) *Form of affidavit.* A manufacturer who is not the importer of the imported worsted wool fabric must submit to Customs an affidavit to substantiate a wool duty refund claim in calendar years 2000, 2001, or 2002, signed by the manufacturer or a knowledgeable officer or employee of the manufacturer, in the following format:

Non-Importing Manufacturer's Affidavit in Support of a Claim for a Duty Refund Under Section 505 of the Trade and Development Act of 2000, for Calendar Year _____

1. The undersigned, (*name of manufacturer*), is a U.S. manufacturer in calendar year _____ of men's or boys' suits, suit-type jackets, or trousers, of imported worsted wool of the kind described 5112.11.20, 5112.19.90, 9902.51.11 or 9902.51.12,;

2. The undersigned was not the importer of imported worsted wool fabric of the kind described in item (1) above;

3. The undersigned purchased (*specify quantity*) of imported worsted wool fabric of the kind described in item (1) above from (*name of importer(s)*) or from a supplier(s), and the relevant invoices are attached;

4. Where the undersigned purchased imported worsted wool fabric of the kind described in item (1) above from (*name of supplier*), the undersigned has substantiating documentation that establishes that such fabric was imported by (*name of importer*);

5(a). Attached is a list of relevant entry summary numbers, provided directly to the undersigned by (*name of importer*), that substantiates the amount of duties paid in the current calendar claim year on the fabric identified in the attached invoices; or

5(b). The importer, (*name of importer*), has agreed to submit a signed affidavit directly to Customs that attests to the fact that the importer sold imported worsted wool fabric of the kind described in item (1) above to the undersigned or to (*name of supplier*), and has agreed to attach a list of the relevant entry

summary numbers that substantiates the amount of duties paid in the current calendar claim year on the fabric identified in the attached invoices; and

6. The undersigned attests that the information set forth in this affidavit is true and accurate to the best of the affiant's knowledge and belief.

(v) R*equired content of an importer's signed affidavit in support of a manufacturer's wool duty refund claim*. Where an importer chooses to assist in the substantiation of a non-importing manufacturer's wool duty refund claim by submitting relevant entry summary numbers directly to Customs, such entry information must be set forth as an attachment to an affidavit that is signed by the importer or by a knowledgeable officer or employee of the importer, and must contain the following information:

(A) A statement as the total amount of duties that the importer paid in the current calendar claim year on worsted wool fabric of the kind described in paragraph (g)(3)(iii) of this section;

(B) A statement that the importer sold worsted wool fabric of the kind described paragraph (g)(3)(iii) of this section, to the identified manufacturer or to the identified supplier(s);

(C) A list of relevant entry summary numbers for the worsted wool fabric of the kind described in paragraph (g)(3)(iii) of this section, set forth as an attachment in either a paper or an electronic format (the latter submitted to Customs on diskette), that substantiates the amount of duties paid during the current calendar claim year on such fabric that was sold by the importer to the identified manufacturer or to the identified supplier(s);

(D) A statement that no entry summary number has been listed in paragraph (g)(3)(v)(C) of this section that has already had 99% or more of the amount of duties paid on that entry refunded pursuant to any refund claim authorized by law; and

(E) A statement that lists any entry summary number in paragraph (g)(3)(v)(C) of this section that is, or may become, subject to an outstanding drawback claim, protest, or any other refund claim authorized by law.

(vi) *Form of affidavit*. The importer's affidavit in support of a manufacturer's wool duty refund claim must be signed by the importer or by a knowledgeable officer or employee of the importer, and be submitted to Customs in the following format:

Importer's Affidavit in Support of a Non-Importing Manufacturer's Claim for a Duty Refund Under Section 505 of the Trade and Development Act of 2000, for Calendar Year _____

1. The undersigned, (*name of importer*), is an importer who paid duties in calendar year _____ on worsted wool fabric of the kind described in HTSUS subheadings 5112.11.20 or 5112.19.90,

imported in calendar year 1999;

2. The undersigned sold worsted wool fabric of the kind described in item (1) above to a manufacturer identified as (*name of manufacturer*) or to a supplier(s) identified as (*name of supplier*);
3. Attached is a list of relevant entry summary numbers for worsted wool fabric of the kind described in item (1) above that substantiates the amount of duties paid in the current calendar claim year on such fabric that was sold by the undersigned to (*name of manufacturer*) or to an identified supplier(s) (*name of supplier*);
4. The undersigned has not listed any entry summary in item (3) above that has had 99% or more of the amount of duties paid on that entry refunded pursuant to any refund claim authorized by law;
5. The undersigned will list any entry summary in item (3) above that is, or may become, subject to an outstanding drawback claim, protest, or any other refund claim authorized by law; and
6. The undersigned attests that the information set forth in this affidavit is true and accurate to the best of the affiant's knowledge and belief.

(h) *Wool duty refund claim processing procedures.* Upon receipt of a timely and complete wool duty refund claim filed pursuant to the terms of this section, Customs will determine the liquidation status of the entry summaries used to substantiate the claim. No duty refund will be issued to a claimant until all the entry summaries identified for purposes of substantiating the claim have been liquidated.

(i) *Denial of a wool duty refund claim.* Customs may deny a wool duty refund claim if the claim was not timely filed, if the claimant is not eligible pursuant to the terms of this section, or if the claimant has not complied with the requirements of this section. Customs will provide the claimant with written notice of the denial of the claim, including the reason for the denial.

(j) *Multiple refund claims and pending judicial review* – (1) *Order of precedence for multiple section 505 duty refund claims.* An eligible claimant is entitled to payment in order of the precedence established by the date and time of submission of a timely and complete claim for a request for refund of duties pursuant to the terms of this section.

(2) *Order of precedence for section 505 duty refund claims and other refund claims.* If a claim for a section 505 duty refund has been received by Customs, and a protest, request for reliquidation, drawback claim, or any other refund claim authorized by law, that relates to any of the eligible wool products identified in any of the entry summaries used to substantiate the filed section 505 claim, has also been filed with Customs but remains undecided, the claim that was received first by Customs, and deemed timely and complete, will be processed first.

(3) *Allowance or denial of subsequent claims.* If an entry has been used to provide the basis for a duty refund claim pursuant to section

505, and the entire amount of duties paid on that entry was refunded to the claimant, a claim for drawback, or any other refund claim authorized by law, that is based on that entry, will be denied by Customs. If an entry has been used to substantiate a claim for a section 505 duty refund, and an amount in duties paid on that entry has not been refunded, the remaining amount may be eligible for subsequent section 505 duty refund claims, drawback, or any other refund claim authorized by law. An entry that has already had 99% or more of the duties paid on that entry refunded by way of a drawback claim, protest, or any other claim authorized by law, may not be used to provide the basis for a wool duty refund claim.

(4) *Pending judicial review.* If a summons involving the tariff classification or the dutiability of an imported wool product has been filed in the Court of International Trade, Customs will deem any entry summary at issue in that judicial proceeding ineligible to substantiate a duty refund claim.

(k) *Penalties and liquidated damages.* A wool duty refund claimant's failure to comply with any of the procedural requirements set forth in this document, or failure to adhere to all applicable laws and regulations, may subject the claimant to penalties, liquidated damages or other administrative sanctions.

RAYMOND W. KELLY
Commissioner of Customs

Approved: October 19, 2000
JOHN P. SIMPSON
Deputy Assistant Secretary of the Treasury

[Published in the **Federal Register**, October 26, 2000 (65 FR 64178)]

---

19 CFR PART 12

(T.D. 00 - 75)

RIN 1515 – AC70

IMPORT RESTRICTIONS IMPOSED ON ARCHAEOLOGICAL MATERIAL FROM THE PREHISPANIC CULTURES OF THE REPUBLIC OF NICARAGUA

AGENCY: Customs Service, Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations to reflect the imposition of import restrictions on certain archaeological material ranging in date from approximately 8000 B.C. through approximately 1500 A.D. and representing prehispanic cultures of the Republic of Nicaragua. These restrictions are being imposed pursuant to an agreement between the United States and Nicaragua that has been entered into under the authority of the Convention on Cultural Property Implementation Act in accordance with the United Nations Educational, Scientific and Cultural Organization (UNESCO) Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property. The document amends the Customs Regulations by adding Nicaragua to the list of countries for which an agreement has been entered into for imposing import restrictions. The document also contains the Designated List of Archaeological Material that describes the types of articles to which the restrictions apply.

EFFECTIVE DATE: October 26, 2000.

FOR FURTHER INFORMATION CONTACT: (Legal Aspects) Joanne Stump, Intellectual Property Rights Branch (202) 927-2330; (Operational Aspects) Al Morawski, Trade Operations (202) 927-0402.

SUPPLEMENTARY INFORMATION:

BACKGROUND

The value of cultural property, whether archaeological or ethnological in nature, is immeasurable. Such items often constitute the very essence of a society and convey important information concerning a people's origin, history, and traditional setting. The importance and popularity of such items regrettably makes them targets of theft, encourages clandestine looting of archaeological sites, and results in their illegal export and import.

The U.S. shares in the international concern for the need to protect endangered cultural property. The appearance in the U.S. of stolen or illegally exported artifacts from other countries where there has been pillage has, on occasion, strained our foreign and cultural relations. This situation, combined with the concerns of museum, archaeological, and scholarly communities, was recognized by the President and Congress. It became apparent that it was in the national interest for the U.S. to join with other countries to control illegal trafficking of such articles in international commerce.

The U.S. joined international efforts and actively participated in deliberations resulting in the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (823 U.N.T.S. 231 (1972)). U.S. acceptance of the 1970 UNESCO Convention was codified into U.S. law as the "Convention on Cultural Property Implementation Act" (Pub.L. 97-446, 19 U.S.C. 2601 *et seq.*) ("the Act"). This was done to

promote U.S. leadership in achieving greater international cooperation towards preserving cultural treasures that are of importance to the nations from where they originate and in achieving greater international understanding of mankind's common heritage.

During the past several years, import restrictions have been imposed on archaeological and ethnological artifacts of a number of signatory nations. These restrictions have been imposed as a result of requests for protection received from those nations as well as pursuant to bilateral agreements between the United States and other countries. More information on import restrictions can be found on the International Cultural Property Protection web site (http://exchanges.state.gov/education/culprop).

Import restrictions are now being imposed on certain archaeological material of Nicaragua representing the prehispanic period of its cultural heritage as the result of a bilateral agreement entered into between the United States and Nicaragua pursuant to 19 U.S.C. 2602. This agreement was signed on June 16, 1999, and, following completion by the Government of Nicaragua of all internal legal requirements, entered into force on October 20, 2000, with the exchange of diplomatic notes. Accordingly, § 12.104g(a) of the Customs Regulations is being amended to indicate that restrictions have been imposed pursuant to the agreement between the United States and Nicaragua. This document amends the regulations by imposing import restrictions on certain archaeological material from Nicaragua as described below.

Material Encompassed in Import Restrictions

In reaching the decision to recommend protection for Nicaragua's cultural patrimony, the Deputy Director of the former U.S. Information Agency (USIA) has determined that, pursuant to the requirements of the Act, the cultural patrimony of Nicaragua is in jeopardy from the pillage of archaeological materials which represent its prehispanic heritage. (Pursuant to the Foreign Affairs Reform and Restoration Act of 1998 (112 Stat. 2681, *et seq.*), most of USIA was consolidated with the Department of State on October 1, 1999.) Ranging in date from approximately 8000 B.C. to approximately 1500 A.D., categories of restricted artifacts include, but are not limited to: figurines of stone, ceramic, shell, and metal; ceramic polychrome vessels, drums, and other small ceramic objects; stone vessels, stone statues, small stone artifacts, and stone metates (carved three-legged grinding stones); and jade and metal (gold) artifacts. These materials of cultural significance are irreplaceable. The pillage of these materials from their context has prevented the fullest possible understanding of the prehispanic cultural history of Nicaragua by systematic destruction of the archaeological record. Furthermore, the cultural

patrimony represented by these materials is a source of identity and esteem for the modern Nicaraguan nation.

DESIGNATED LIST

The bilateral agreement between Nicaragua and the United States covers the categories of artifacts described in a Designated List of Pre-Columbian (prehispanic) Archaeological Materials from Nicaragua, which is set forth below. Importation of articles on this list is restricted unless the articles are accompanied by an appropriate export certificate issued by the Government of the Republic of Nicaragua or documentation demonstrating that the articles left the country of origin prior to the effective date of the import restriction.

PRE-COLUMBIAN ARCHAEOLOGICAL MATERIALS FROM NICARAGUA REPRESENTING PREHISPANIC CULTURES RANGING IN DATE APPROXIMATELY FROM 8000 B.C. TO 1500 A.D.

I. *Ceramics*

The diverse regions of Nicaragua have produced a wide variety of ceramic types and subtypes. Representative types are listed below according to their earliest occurrence but may continue into the succeeding period.

A. *Vessels*

1. *Period III (c. 4000 - 1000 B.C.)* – Types include Toya Incised, Palmar Incised, Rosales Zoned Engraved, Espinoza Red Striped, Rivas Negative, Usulutan-like styles, and Cukra Point Complex.

2. *Period IV (c. 1000 B.C. – 500 A.D.)* – Types include Bocana Incised, Matanga Polychrome, Red Jobo Excised, Chaguitillo Polychrome, Rodeo Sieve, Red Andes Incised, Jicaro Polychrome, Red Coyolito Engraved, Bonifacio Excised and Engraved, Guarumo Incised and Punctate, Red-on-Biege Nispero, White-on-Brown Capulin, Black-on-Beige Yoboa Excised Polychrome, Jarkin Complex, Smalla Complex, and Siteia Complex.

3. *Period V (c. 500 – 1000 A.D.)* – Types include Chavez White-on-Red, Velasco with Black Stripes, Potosi Applique, Leon Punctate, Tola Trichrome, Papagayo Polychrome, Mora Polychrome, Sacasa Striated, Pataky Polychrome, Ometepe Red-Slipped Incised, Delirio Red-on-White, Subasa Polychrome, Oregano Polychrome, Zamora Incised, Red-and-Black Drum, Arrayan Black Incised, Ulua Polychrome, Babilonia Polychrome, Cacauli Red-on-Orange, Tenampua Polychrome, Tapias Polychrome.

4. *Period VI (c. 1000 – 1550 A.D.)* – Types include Vallejo Polychrome, Castillo Engraved, Luna Polychrome, Madeira Polychrome, Murrillo Applique, Patastule-on-Red Bands, Combo Sieve, Carlitos Polychrome, Red-and-White Oluma, Miragua, Red Coronado.

B. *Seals and Beads*

Seals are small cylindrical objects with a hole lengthwise through

the center, usually made of ceramic, used to roll an impressed pattern. Their usual size is about 5 cm long and about 2.5 cm in diameter. Also present are flat rectangular stamp seals. These are carved with geometric designs or stylized human figures. Ceramic beads also occur.

C. *Spindle Whorls*

Disk and conical-shaped ceramic objects, 2-7 cm in diameter, used as spindle whorls. Most have incised geometric designs.

II. *Stone*

A. *Statues (c. 800 – 1550 A.D.)*

These seated, standing, or columnar stone statues are characteristic of the islands in Lake Nicaragua and the Chontales and Rivas areas around the lakes. Made of well-finished basalt, they reach up to four meters in height. Some examples may date earlier than 800 A.D. The most characteristic subject is a human figure and an associated animal. The animal is either lying on the back and shoulders of the human figure or an animal head resting on top of the human head. Other subjects include human figures sitting on a column or with arms bent across the chest.

B. *Vessels*

Ceremonial vessels are made of stone in the typical ceramic styles. These are mainly known from the northern area of Nicaragua and they are similar in style to vessels originating in Honduras.

C. *Grinding Stones*

Grinding stones (*metates*) are usually carved of basalt. Most often, they consist of a simple curved platform supported by three legs. They range in length from about 60 cm to 150 cm. The type most commonly collected is elaborately carved with geometric or anthropomorphic motifs on the legs and sides. Sometimes an effigy head, such as a bird or other animal, is added to one end. These are known to occur in the Pacific coastal area and the islands in Lake Nicaragua.

D. *Petroglyphs (Incised or Carved Natural Rock Formations)*

Geometric designs or relief figures representing humans and animals carved directly into living rock. These are found throughout Nicaragua. Some of the best known come from the islands in Lake Nicaragua. These are frequently cut out of the natural rock formation and removed from their original context.

E. *Mace Heads*

Small, highly polished, spherical, or oblong objects of various kinds of stone, with a hole through the center. Mace heads are frequently

in the form of animal or human heads, or with geometrical designs carved into the surface. Their maximum dimension ranges from about two to six inches. They are best known from the Pacific coastal area.

F. *Greenstone Objects*

A wide variety of highly polished ornamental small objects, usually pendants made of green-colored quartz, jadeite, serpentine, and similar materials. Human, animal, and other motifs are represented, although birds are most common. The objects range in size from about two to six inches, and they are usually drilled for suspension.

G. *Jewelry*

Stone beads and other items for personal adornment.

H. *Chipped Stone Tools*

Arrowheads and other tools or weapons.

III. *Gold*

Pendants and other decorative ornaments with a wide variety of shapes and motifs, including animal and human figures. The gold is sometimes mixed with copper giving the objects a slightly reddish appearance.

IV. *Shell*

Natural shell pierced for stringing in necklaces.

INAPPLICABILITY OF NOTICE AND DELAYED EFFECTIVE DATE

Because the amendment to the Customs Regulations contained in this document imposing import restrictions on the above-listed cultural property of Nicaragua is being made in response to a bilateral agreement entered into in furtherance of the foreign affairs interests of the United States, pursuant to section 553(a)(1) of the Administrative Procedure Act, (5 U.S.C. 553(a)(1)), no notice of proposed rulemaking or public procedure is necessary. For the same reason, a delayed effective date is not required pursuant to 5 U.S.C. 553(d)(3).

REGULATORY FLEXIBILITY ACT

Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply. Accordingly, this final rule is not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

EXECUTIVE ORDER 12866

This amendment does not meet the criteria of a "significant regulatory action" as described in E.O. 12866.

DRAFTING INFORMATION

The principal author of this document was Bill Conrad, Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

LIST OF SUBJECTS IN 19 CFR PART 12

Customs duties and inspections, Imports, Cultural property.

AMENDMENT TO THE REGULATIONS

Accordingly, Part 12 of the Customs Regulations (19 CFR Part 12) is amended as set forth below:

PART 12—[AMENDED]

1. The general authority and specific authority citations for Part 12, in part, continue to read as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States (HTSUS)), 1624;

* * * * *

Sections 12.104 through 12.104i also issued under 19 U.S.C. 2612;

* * * * *

2. In § 12.104g, paragraph (a), the table is amended by adding Nicaragua in appropriate alphabetical order as follows:

State	Cultural Property	T.D. No.
* * * * *	* * * * *	* * * * *
Nicaragua	Archaeological Material of pre-Columbian cultures ranging approximately from 8000 B.C. to 1500 A.D.	T.D. 00 - 75
* * * * *	* * * * *	* * * * *

RAYMOND W. KELLY
Commissioner of Customs

Approved: September 8, 2000
JOHN P. SIMPSON
Deputy Assistant Secretary of the Treasury

[Published in the **Federal Register**, October 26, 2000 (65 FR 64140)]

U.S. Customs Service

General Notices

PROPOSED COLLECTION; COMMENT REQUEST

ANDEAN TRADE PREFERENCES

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, Customs invites the general public and other Federal agencies to comment on an information collection requirement concerning Andean Trade Preferences. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104-13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before December 22, 2000, to be assured of consideration.

ADDRESS: Direct all written comments to U.S. Customs Service, Information Services Group, Attn.: J. Edgar Nichols, 1300 Pennsylvania Avenue, NW, Room 3.2C, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to U.S. Customs Service, Attn.: J. Edgar Nichols, 1300 Pennsylvania Avenue NW, Room 3.2C, Washington, D.C. 20229, Tel. (202) 927-1426.

SUPPLEMENTARY INFORMATION:

Customs invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Public Law 104-13; 44 U.S.C. 3505(c)(2)). The comments should address: (1) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The com-

ments that are submitted will be summarized and included in the Customs request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document Customs is soliciting comments concerning the following information collection:

Title: Andean Trade Preferences
OMB Number: 1515-0219
Form Number: N/A
Abstract: This collection identifies the country of origin and related rules which apply for purposes of duty-free or reduced-duty treatment and specifies the documentary and other procedural requirements for preferential tariff treatment under the Andean Trade Preferences Act 19 U.S.C. 3201 through 3206.
Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.
Type of Review: Extension (without change)
Affected Public: Businesses, Individuals, Institutions
Estimated Number of Respondents: 150,000
Estimated Time Per Respondent: 2 minutes
Estimated Total Annual Burden Hours: 5,000
Estimated Total Annualized Cost on the Public: N/A

Dated: October 31, 2000

J. EDGAR NICHOLS
Agency Clearance Officer,
Information Services Branch

[Published in the **Federal Register**, October 23, 2000 (65 FR 63287)]

PROPOSED COLLECTION; COMMENT REQUEST

AUTOMATED CLEARINGHOUSE CREDIT

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, Customs invites the general public and other Federal agencies to comment on an information collection requirement concerning Automated Clearinghouse Credit . This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104-13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before December 22, 2000, to be assured of consideration.

ADDRESS: Direct all written comments to U.S. Customs Service, Information Services Group, Attn.: J. Edgar Nichols, 1300 Pennsylvania Avenue, NW, Room 3.2C, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to U.S. Customs Service, Attn.: J. Edgar Nichols, 1300 Pennsylvania Avenue NW, Room 3.2C, Washington, D.C. 20229, Tel. (202) 927-1426.

SUPPLEMENTARY INFORMATION:

Customs invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Public Law 104-13; 44 U.S.C. 3505(c)(2)). The comments should address: (1) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the Customs request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document Customs is soliciting comments concerning the following information collection:

Title: Automated Clearinghouse Credit

OMB Number: 1515-0218

Form Number: N/A

Abstract: The information is to be used by Customs to send information to the company (such as revised format requirements) and to contact participating companies if there is a payment problem.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change)

Affected Public: Businesses, Individuals, Institutions

Estimated Number of Respondents: 200

Estimated Time Per Respondent: 5 minutes

Estimated Total Annual Burden Hours: 17

Estimated Total Annualized Cost on the Public: N/A

Dated: October 31, 2000

J. EDGAR NICHOLS
Agency Clearance Officer,
Information Services Branch

[Published in the **Federal Register**, October 23, 2000 (65 FR 63287)]

PROPOSED COLLECTION; COMMENT REQUEST

DRAWBACK PROCESS REGULATIONS AND ENTRY COLLECTION DOCUMENTS

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, Customs invites the general public and other Federal agencies to comment on an information collection requirement concerning Drawback Process Regulations and Entry Collection Documents. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104-13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before December 22, 2000, to be assured of consideration.

ADDRESS: Direct all written comments to U.S. Customs Service, Information Services Group, Attn.: J. Edgar Nichols, 1300 Pennsylvania Avenue, NW, Room 3.2C, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to U.S. Customs Service, Attn.: J. Edgar Nichols, 1300 Pennsylvania Avenue NW, Room 3.2C, Washington, D.C. 20229, Tel. (202) 927-1426.

SUPPLEMENTARY INFORMATION:

Customs invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Public Law 104-13; 44 U.S.C. 3505(c)(2)). The comments should address: (1) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the Customs request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document Customs is soliciting comments concerning the following information collection:

Title: Drawback Process Regulations and Entry Collection Documents.
OMB Number: 1515-0213
Form Number: Customs Forms 7551, 7552, 7553,

Abstract: The information is to be used by Customs officers to expedite the filing and processing of drawback claims, while maintaining necessary enforcement information to maintain effective administrative oversight over the drawback program.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change)

Affected Public: Businesses, Individuals, Institutions

Estimated Number of Respondents: 11,650

Estimated Time Per Respondent: 8 hours

Estimated Total Annual Burden Hours: 90,500

Estimated Total Annualized Cost on the Public: N/A

Dated: October 31, 2000

J. EDGAR NICHOLS
Agency Clearance Officer,
Information Services Branch

[Published in the **Federal Register**, October 23, 2000 (65 FR 63285)]

PROPOSED COLLECTION; COMMENT REQUEST

LAND BORDER CARRIER INITIATIVE PROGRAM

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, Customs invites the general public and other Federal agencies to comment on an information collection requirement concerning the Land Border Carrier Initiative Program. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104-13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before December 22, 2000, to be assured of consideration.

ADDRESS: Direct all written comments to U.S. Customs Service, Information Services Group, Attn.: J. Edgar Nichols, 1300 Pennsylvania Avenue, NW, Room 3.2C, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to U.S. Customs Service, Attn.: J. Edgar Nichols, 1300 Pennsylvania Avenue NW, Room 3.2C, Washington, D.C. 20229, Tel. (202) 927-1426.

SUPPLEMENTARY INFORMATION:

Customs invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Public Law 104-13; 44 U.S.C. 3505(c)(2)). The comments should address: (1) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the Customs request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document Customs is soliciting comments concerning the following information collection:

Title: Land Border Carrier Initiative Program

OMB Number: 1515-0217

Form Number: N/A

Abstract: The Land Border Carrier Initiative Program is designed to prevent smugglers of illicit drugs from utilizing commercial conveyances for their commodities, and to make participation in this program at certain, high-risk locations a condition for use of the Line Release method of processing repetitive entries of merchandise.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change)

Affected Public: Businesses, Individuals, Institutions

Estimated Number of Respondents: 2,000

Estimated Time Per Respondent: 5 hours

Estimated Total Annual Burden Hours: 10,000

Estimated Total Annualized Cost on the Public: N/A

Dated: October 31, 2000

J. EDGAR NICHOLS
Agency Clearance Officer,
Information Services Branch

[Published in the **Federal Register**, October 23, 2000 (65 FR 63286)]

GENERAL NOTICE

COPYRIGHT, TRADEMARK, AND TRADE NAME

(No. 9- 2000)

AGENCY: U.S. Customs Service, Department of the Treasury.

SUMMARY: The copyrights, trademarks, and trade names recorded with the U.S. Customs Service during the month of September 2000. The last notice was published in the CUSTOMS BULLETIN on September 27, 2000.

Corrections or information to update files may be sent to U.S. Customs Service, IPR Branch, 1300 Pennsylvania Avenue, N.W., Ronald Reagan Building -3rd floor, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Joanne Roman Stump, Chief, Intellectual Property Rights Branch, (202) 927-2330.

Dated: October 25, 2000

JOANNE ROMAN STUMP,
Chief,
Intellectual Property Rights Branch

The lists of recordations follow:

REC NUMBER	EFF DT	EXP DT	NAME OF COP, TMK, TNM OR MSK	OWNER NAME	RES
COP0000158	20000906	20200906	TURKEY COLLECTION NO. 1	B.S. NEW WORLD ENTERPRISES	N
COP0000159	20000907	20200907	LOLLIPOP PAINT SHOP	IMPACT CONFECTIONS, INC.	N
COP0000160	20000907	20200907	LOLLIPOP PAINT SHOP	IMPACT CONFECTIONS, INC.	N
COP0000161	20000908	20200908	B\O BASSING BEAT ZH-8010	TOMSTOYS INC.	N
COP0000162	20000908	20200908	POWER RANGERS LIGHTSPEED RESCUE-STYLE GUIDE	SABAN ENTERTAINMENT, INC.	N
COP0000163	20000908	20200908	ROSE GARDEN (149 F)	KENNETH CHONG, DBA K.S.P. CO.	N
COP0000164	20000908	20200908	FLOWER IN THE CHECK (147 C)	KENNETH CHONG, DBA K.S.P. CO.	N
COP0000165	20000908	20200908	NEW ANIMAL KINGDOM (347Z)	KENNETH CHONG	N
COP0000166	20000908	20200908	FAN FLOWER (117F)	KENNETH CHONG	N
COP0000167	20000908	20200908	HORSES (901 H)	KENNETH CHONG	N
COP0000168	20000908	20200908	EAGLE (333 E)	KENNETH CHONG	N
COP0000169	20000914	20200914	ROLLING AIRPLANE (MC-5251)	NAM SEONG CO.	N
COP0000170	20000914	20200914	ROLLING CARROUSEL (MC-5252)	NAM SEONG CO.	N
COP0000171	20000914	20200914	ROLLING HELICOPTER (MC-5243)	NAM SEONG CO.	N
COP0000172	20000914	20200914	ROLLING HELICOPTER (MC-5243)	NAM SEONG CO.	N
COP0000173	20000914	20200914	ROLLING HELICOPTER (MC-5243)	NAM SEONG CO.	N
COP0000174	20000914	20200914	POSEIDON (FBR-783)	KOY TOY INDUSTRIAL CO.	N
COP0000175	20000914	20200914	TREVOR RAINBOW TROUT	UPRIGHT MANUFACTURERS INC.	N
COP0000176	20000921	20200921	DIGIMON DIGITAL MONSTERS - STYLE GUIDE	TOEI ANIMATION CO., LTD.	N
COP0000177	20000921	20200921	PIKACHU'S VACATION	NINTENDO OF AMERICA INC.	N
COP0000178	20000926	20200926	HAND, FINGER WIDTH (LEFT & RIGHT)	STAN & CYNTHIA TENEN	N
COP0000179	20000927	20200927	OPIUM FLOWER (115 F)	KENNETH CHONG	N
COP0000180	20000927	20200927	HONEY MOON FLOWER (102 F)	KENNETH CHONG	N
COP0000181	20000927	20200927	JINEBAL FLOWER (246 F)	KENNETH CHONG	N
COP0000182	20000927	20200927	SHINNIBON FLOWER (166 F)	KENNETH CHONG	N
COP0000183	20000927	20200927	SUN MAYA FLOWER (101 F)	KENNETH CHONG	N
COP0000184	20000927	20200927	BLACK PANTHER IN THE JUNGLE (220 L)	KENNETH CHONG	N
COP0000185	20000928	20200928	TAE BO LIVE-BASIC VOLUME 5	SHAPE THE FUTURE INTERNA	N
COP0000186	20000928	20000928	B.S. NEW WORLD ENTERPRISES	SHAPE THE FUTURE INTERNA	N
COP0000187	20000928	20200928	TAE BO LIVE-ADVANCED VOLUME 7	SHAPE THE FUTURE INTERNA	N
COP0000188	20000928	20200928	TAE BO LIVE-BASIC VOLUME 7	SHAPE THE FUTURE INTERNA	N
SUBTOTAL RECORDATION TYPE			31		
TMK0000437	20000911	20091212	NINENDO OFFICIAL SEAL OF QUALITY AND DESIGN	NINTENDO OF AMERICA INC.	N
TMK0000438	20000911	20100613	POKEMON (STYLIZED)	NINTENDO OF AMERICA INC.	N
TMK0000439	20000911	20100606	POKEMON (STYLIZED)	NINTENDO OF AMERICA INC.	N
TMK0000440	20000911	20100613	POKEMON (STYLIZED)	NINTENDO OF AMERICA INC.	N
TMK0000441	20000911	20100613	POKEMON (STYLIZED)	NINTENDO OF AMERICA INC.	N
TMK0000442	20000911	20100613	POKEMON (STYLIZED)	NINTENDO OF AMERICA INC.	N
TMK0000443	20000911	20100613	POKEMON (STYLIZED)	NINTENDO OF AMERICA INC.	N
TMK0000444	20000911	20100613	POKEMON (STYLIZED)	NINTENDO OF AMERICA INC.	N
TMK0000445	20000912	20091214	CONFIGURATION OF A NARROW BAR PLACED ON A LOUDSPEAKER	BOSE CORPORATION	N
TMK0000446	20000912	20091130	KIWI LAMB	ADVANCED FOODS OF NEW ZEALAND	N
TMK0000447	20000912	20080721	PILOT BRANDS FOCUSED ON EXCELLENCE AND DESIGN	PILOT TRADING COMPANY INC.	N
TMK0000448	20000912	20061217	CHEF CERTIFIED AND DESIGN	PILOT TRADING COMPANY INC.	N
TMK0000449	20000813	20030831	BRIDE & GROOM	BRIDE & GROOM MAGAZINE INC.	Y

REC NUMBER	EFF DT	EXP DT	NAME OF COP, TMK, TNM OR MSK	OWNER NAME	RES
TMK0000450	20000914	20030831	DOCUMENT CENTRE	XEROX CORPORATION	N
TMK0000451	20000914	20090504	DOCUPRINT	XEROX CORPORATION	N
TMK0000452	20000914	20070415	WORKCENTER	XEROX CORPORATION	N
TMK0000453	20000915	20090919	METROPOLITAN VIEW	FEDERATED DEPARTMENT STORES INC.	N
TMK0000454	20000915	20090921	STYLE & CO.	FEDERATED BRANDS INC.	N
TMK0000455	20000915	20091005	STYLE & CO.	FEDERATED BRANDS INC.	N
TMK0000456	20000915	20070210	ALFANI	FEDERATED BRANDS INC.	Y
TMK0000457	20000918	20061112	1810	INTERNATIONAL SILVER COMPANY	N
TMK0000458	20000918	20061119	WILD ROSE	INTERNATIONAL SILVER COMPANY	N
TMK0000459	20000918	20030817	VICTORIAN ROSE	INTERNATIONAL SILVER COMPANY	N
TMK0000460	20000918	20060409	MISC. DESIGN ("GRAND BAROQUE")	WALLACE INTERNATIONAL SILVERSMIT	N
TMK0000461	20000918	20080413	GRAND COLONIAL	WALLACE INTERNATIONAL SILVERSMIT	N
TMK0000462	20000918	20080413	STRADIVARI	WALLACE INTERNATIONAL SILVERSMIT	N
TMK0000463	20000918	20091202	VALENCIA	WALLACE INTERNATIONAL SILVERSMIT	N
TMK0000464	20000918	20080527	PRELUDE	WALLACE INTERNATIONAL SILVERSMIT	N
TMK0000465	20000918	20080603	JOAN OF ARC	WALLACE INTERNATIONAL SILVERSMIT	N
TMK0000466	20000918	20080603	RHAPSODY	WALLACE INTERNATIONAL SILVERSMIT	N
TMK0000467	20000918	20070311	CASA LAPOSTOLLE	SOCIETE DES PRODUITS MARNIER	N
TMK0000468	20000918	20021110	GRAND MARNIER	SOCIETE DES PRODUITS MARNIER	N
TMK0000469	20000918	20021117	GRAND MARNIER (STYLIZED LETTERS)	SOCIETE DES PRODUITS MARNIER	N
TMK0000470	20000918	20090411	GRAND MARNIER LIQUOR TRIPLE ORANGE J.D. LAPOSTOLLE	SOCIETE DES PRODUITS MARNIER	N
TMK0000471	20000918	20051223	GRAND MARNIER (LIQUOR AND DESIGN)	SOCIETE DES PRODUITS MARNIER	N
TMK0000472	20000918	20050610	GRAND MARNIER	SOCIETE DES PRODUITS MARNIER	N
TMK0000473	20000918	20100328	JML LOGO	JO MALONE LIMITED	N
TMK0000474	20000918	20060203	JO MALONE	JO MALONE LIMITED	N
TMK0000475	20000918	20081229	JO MALONE	JO MALONE LIMITED	N
TMK0000476	20000919	20100404	CRISTALL	CRISTALL U.S.A. LIMITED	N
TMK0000477	20000919	20090629	ALL OVER SHIMMER	STILA COSMETICS, INC.	N
TMK0000478	20000919	20090914	MARMOELETTROMECCANICA U.S.A.	REGENT PRODUCTS, INC.	N
TMK0000479	20000919	20090427	GURKHA	BEACH CIGAR GROUP	N
TMK0000480	20000919	20050627	IMPREGUM	ESPE DENTAL AG	N
TMK0000481	20000919	20080929	TS-800 TRIGGER SPRAYER	CALMAR, INC.	N
TMK0000482	20000921	20090824	CARBRIO	DOONEY & BOURKE, INC.	N
TMK0000483	20000921	20090330	CABRIOLET	DOONEY & BOURKE, INC.	N
TMK0000484	20000921	20081020	CABRIOLET	DOONEY & BOURKE, INC.	N
TMK0000485	20000925	20100314	BASIC BLINDZ	LF CORPORATION	N
TMK0000486	20000925	20100314	BASIC BLINDZ AND DESIGN	LF CORPORATION	N
TMK0000487	20000926	20090411	DANIEL GREEN	DANIEL GREEN COMPANY	N
TMK0000488	20000926	20030918	HIDE-AWAYS	DANIEL GREEN COMPANY	N
TMK0000489	20000926	20020915	L.B. EVANS SINCE 1804	DANIEL GREEN COMPANY	N
TMK0000490	20000926	20100718	TRIFORCE	CALLAWAY GOLF COMPANY	N
TMK0000491	20000926	20100718	C DESIGN	CALLAWAY GOLF COMPANY	N
TMK0000492	20000926	20060826	TOOLS OF THE TRADE	FEDERATED BRANDS, INC.	N
TMK0000493	20000926	20020519	TOOLS OF THE TRADE ILLUMINA+	FEDERATED BRANDS, INC.	N
TMK0000494	20000926	20071027	CHARTER CLUB	FEDERATED BRANDS, INC.	N
TMK0000495	20000926	20060422	CHARTER CLUB AND DESIGN	FEDERATED BRANDS, INC.	N
TMK0000496	20000926	20070303	CHARTER CLUB	FEDERATED BRANDS, INC.	N

REC NUMBER	EFF DT	EXP DT	NAME OF COP, TMK, TNM OR MSK	OWNER NAME	RES
TMK0000497	20000926	20060827	CHARTER CLUB	FEDERATED BRANDS, INC.	N
TMK0000498	20000926	20090207	CHARTER CLUB	FEDERATED BRANDS, INC.	N
TMK0000499	20000926	20061022	BLOOMINGDALE'S	FEDERATED WESTERN PROPERTIES INC	N
TMK0000500	20000926	20060910	BLOOMINGDALE'S (STYLIZED)	FEDERATED WESTERN PROPERTIES INC	N
TMK0000501	20000927	20080517	NORDICTRACK	ICON HEALTH & FINESS, INC.	N
TMK0000502	20000927	20100404	AMD-K7	ADVANCED MICRO DEVICES, INC.	N
TMK0000503	20000927	20100613	SOFT-WALK	PENOBSCOT SHOE COMPANY	N
TMK0000504	20000927	20070819	TROTTERS	PENOBSCOT SHOE COMPANY	N
TMK0000505	20000927	20070811	BIAXIAL & DESIGN	MEDECO SECURITY LOCKS, INC.	N

SUBTOTAL RECORDATION TYPE 69

TOTAL RECORDATIONS ADDED THIS MONTH 100

U.S. Customs Service

October 25, 2000
Department of the Treasury
Office of the Commissioner of Customs
Washington, D.C.

The following documents of the United States Customs Service, Office of Regulations and Rulings, have been determined to be of sufficient interest to the public and U.S. Customs field offices to merit publication in the Customs Bulletin.

STUART P. SEIDEL
Assistant Commissioner,
Office of Regulations and Rulings

U.S. Customs Service

General Notice

19 CFR PART 177

PROPOSED REVOCATION OF RULING LETTER AND TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF CHEMICAL COMPOUND (+)-DI-O-P-TOLUOYL-D-TARTARIC ACID

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of proposed revocation of tariff classification ruling letter and treatment relating to the classification of the chemical compound (+)-DI-O-P-Toluoyl-D-Tartaric Acid.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625 (c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that Customs intends to revoke a ruling concerning the tariff classification of the chemical compound (+)-Di-O-P-Toluoyl-D-Tartaric Acid, under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, Customs intends to revoke any treatment previously accorded by Customs to substantially identical transactions. Comments are invited on the correctness of the proposed actions.

DATE: Comments must be received on or before December 8, 2000.

ADDRESS: Written comments are to be addressed to U.S. Customs Service, Office of Regulation and Rulings, Attention: Commercial Rulings Division, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20229. Comments submitted may be inspected at the same address during regular business hours.

FOR FURTHER INFORMATION CONTACT: Allyson Mattanah, General Classification Branch, (202) 927-2326.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057) (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are **"in-**

formed compliance" and **"shared responsibility."** These concepts are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's responsibilities and rights under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. §1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625 (c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that Customs intends to revoke a ruling pertaining to the tariff classification of (+)-DI-O-P-Toluoyl-D-Tartaric Acid. Although in this notice Customs is specifically referring to Headquarters Ruling Letter (HQ) 960536, dated May 11, 1998, this notice covers any rulings on this merchandise which may exist but have not been specifically identified. Customs has undertaken reasonable efforts to search existing databases for rulings in addition to the one identified. No further rulings have been found. This notice will cover any rulings on this merchandise that may exist but have not been specifically identified. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice, should advise Customs during this notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by section 623 of Title VI, Customs intends to revoke any treatment previously accorded by Customs to substantially identical transactions. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or Customs previous interpretation of the Harmonized Tariff Schedule of the United States (HTSUS). Any person involved in substantially identical transactions should advise Customs during this notice period. An importer's failure to advise Customs of substantially identical transactions, or of a specific ruling not identified in this notice, may raise issues of reasonable care on the part of the importer or his agents for importations of merchandise subsequent to this notice.

In HQ 960536, following a Customs laboratory report that concluded that (-)-DI-O-P- Toluoyl-L-Tartaric Acid and the stereo isomer (+)-DI-

O-P-Toluoyl-D-Tartaric Acid are both esters of polycarboxylic acid with alcohol function, Customs revoked New York Ruling Letter (NY) B83470, which classified (+)-Di-p-Toluoyl-l-Tartaric Acid (CAS # 32634-68-7) in subheading 2918.13.50, HTSUS, the provision for "[C]arboxylic acids with alcohol function but without other oxygen function, their anhydrides, halides, peroxides, peroxyacids and their derivatives: [S]alts and esters of tartaric acid: [O]ther." HQ 960536, classified the product in subheading 2918.19.20, HTSUS, the provision for "[C]arboxylic acids with alcohol function but without other oxygen function, their anhydrides, halides, peroxides, peroxyacids and their derivatives: [O]ther: [A]romatic: [O]ther: [P]roducts described in additional U.S. note 3 to section VI (see Attachment "A" to this document).

It is now Customs position that this substance was correctly classified in NY B83470, in subheading 2918.13.5000, HTSUS, as an ester of tartaric acid.

Customs, pursuant to 19 U.S.C. 1625(c)(1), intends to revoke HQ 960536 and any other ruling not specifically identified, to reflect the proper classification of the merchandise pursuant to the analysis set forth in Proposed Headquarters Ruling Letter (HQ) 964378. (see Attachment "B" to this document). Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs intends to revoke any treatment previously accorded by Customs to substantially identical transactions. Before taking this action, consideration will be given to any written comments timely received.

Dated: October 23, 2000

MARVIN AMERNICK
(for John Durant, Director,
Commercial Rulings Division)

[Attachments]

[ATTACHMENT A]

May 11, 1998
CLA-2 RR:CR:GC 960536 RC
Category: Classification
Tariff No.: 2918.19.2000

MR. JOSEPH J. CHIVINI
AUSTIN CHEMICAL COMPANY, INC.
1565 Barclay Boulevard
Buffalo Grove, Illinois 60089-4537

Re: Revocation of NY B83470; (+)-DI-O-P-Toluoyl-D-Tartaric Acid.

DEAR MR. CHIVINI:

We have been asked to reconsider NY B83470, dated April 11, 1997. This ruling, issued to you on behalf of your company, concerns the classification of (+)-DI-O-P-Toluoyl-D-Tartaric Acid under the Harmonized Tariff Schedule of the United States (HTSUS). This letter is to inform you that NY B83470 no longer reflects the views of the U.S. Customs Service.

Pursuant to section 625, Tariff Act of 1930 (19 U.S.C. §1625), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103-182, 107 Stat. 2057, 2186 (1993), notice of the proposed revocation of NY B83470 was published on April 8, 1998, in the Customs Bulletin, Volume 32, Number 14. No comments were received in response to the notice. The following represents our position.

Facts:

In NY B83470, Customs classified (+)-DI-O-P-Toluoyl-D-Tartaric Acid (CAS # 32634- 68-7) in subheading 2918.13.5000, HTSUS, the provision for other carboxylic acids with alcohol function but without other oxygen function, their anhydrides, halides, peroxides, peroxyacids and their derivatives: salts and esters of tartaric acid, dutiable at the rate of 4.4 percent ad valorem (1997). Analysis by the Customs laboratory indicates the (+)-DI-O-P-Toluoyl-D- Tartaric Acid is not a salt or ester of tartaric acid as originally ruled in NY B83470, classifiable in subheading 2918.13.5000, HTSUS, but rather an ester of an aromatic polycarboxylic acid.

Issue:

What is the proper tariff classification of the (+)-DI-O-P-Toluoyl-D-Tartaric Acid under the HTSUS?

Law and Analysis:

Classification under the HTSUS is made in accordance with the General Rules of Interpretation (GRIs). The systematic detail of the HTSUS is such that virtually all goods are classified by application of GRI 1, that is, according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs may then be applied. GRI 6 provides that the GRIs apply in the same fashion to subheadings within the same heading.

Chapter 29 Note 5(a) states that esters of acid-function compounds of sub-Chapters I to VII with organic compounds of these sub-Chapters are to be classified with that compound which is classified in the heading which occurs last in numerical order in these sub-Chapters.

The (+)-DI-O-P-Toluoyl-D-Tartaric Acid is not a salt or ester of tartaric acid as originally ruled in 2918.13.5000, HTSUS. Analysis by the Customs laboratory indicates the (+)-DI-O-P- Toluoyl-D-Tartaric Acid is an ester of an aromatic polycarboxylic acid, classifiable in 2917.39.3000, HTSUS, and a derivative of a carboxylic acid with alcohol function (tartaric acid).

Therefore, we find that (+)-DI-O-P-Toluoyl-D-Tartaric Acid is properly classified in subheading 2918.19.2000, HTSUS, the provision for other carboxylic acids with alcohol function but without other oxygen function, their anhydrides, halides, peroxides, peroxyacids and their derivatives: other: aromatic: other: products described in additional U.S. note 3 to section VI.

Holding:

The (+)-DI-O-P-Toluoyl-D-Tartaric Acid is properly classifiable in subheading 2918.19.2000, HTSUS, as a derivative of a carboxylic acid with alcohol function (tartaric acid). The applicable rate of duty in 1998 is 10.7 percent ad valorem.

Pursuant to 19 U.S.C. §1625, NY B83470, dated April 11, 1997, is revoked.

In accordance with 19 U.S.C. §1625, this ruling will become effective 60 days

from its publication in the Customs Bulletin. Publication of rulings or decisions pursuant to 19 U.S.C. §1625 does not constitute a change of practice or position in accordance with section 177.10(c)(1), Customs Regulations (19 C.F.R. §177.10(c)(1).

MARVIN AMERNICK
(for John Durant, Director,
Commercial Rulings Division)

[ATTACHMENT B]

CLA-2 RR:CR:GC 964378 AM
Category: CLASSIFICATION
Tariff No.: 2918.13.50

MR. JOSEPH J. CHIVINI
AUSTIN CHEMICAL
1565 Barclay Blvd.
Buffalo Grove, IL 60089

Re: HQ 964378: (-)-Dibenzoyl-L-tartaric acid anhydrous, CAS #2743-38-6 and Dibenzoyl-D-tartaric acid, CAS #1706-42-5; and HQ 960536: (+)-DI-O-P-Toluoyl-D-Tartaric Acid, CAS #32634-68-7.

DEAR MR. CHIVINI:

This is in reference to your letters dated March 1, 2000, and March 10, 2000, to the Director, National Commodity Specialist Division, New York, requesting rulings under the Harmonized Tariff Schedule of the United States, (HTSUS), of the chemical compounds Dibenzoyl-D-tartaric acid and (-)-Dibenzoyl-L-tartaric acid anhydrous, respectively. Your letters were referred to this office for reply.

In reviewing this issue, we have also reviewed the decision in Headquarters Ruling Letter (HQ) 960536 issued to you on May 11, 1998, concerning the classification, under the HTSUS, of the chemical compound (+)-DI-O-P-Toluoyl-D-Tartaric Acid. We have determined that the classification set forth in HQ 960536 for that compound is in error. This ruling revokes HQ 960536 and classifies the other similar substances, under the HTSUS, accordingly.

Facts:

The substance (+)-DI-O-P-Toluoyl-D-Tartaric Acid has the molecular formula $C_{20}H_{18}O_8$ and the CAS #32634-68-7. The substances (-)-Dibenzoyl-L-tartaric acid anhydrous and Dibenzoyl-D-tartaric acid are optical isomers with the molecular formula $C_{18}H_{14}O_8$ (-)-Dibenzoyl-L-tartaric acid is assigned CAS registry #2743-38-6 and Dibenzoyl-D-tartaric acid is assigned CAS registry #1706-42-5. All three substances are imported in bulk as a white or off white to yellowish powder. They are used as pharmaceutical intermediates.

Following Customs laboratory report 2-97-21360-001, dated March 28, 1997, that concluded that (-) -DI-O-P-toluoyl-l-tartaric acid and (+)-DI-O-P-Toluoyl-D-Tartaric Acid is an ester of a polycarboxylic acid with alcohol function, Customs revoked New York Ruling Letter (NY) B83470, dated April 11, 1997, which classified (+)-(Di)-p-toluoyl-l-tartaric acid in subheading 2918.13.5000, HTSUS, as an ester of tartaric acid.

Lab report #2-2000-20664-001, dated March 23, 2000, concluded that Dibenzoyl-D-tartaric acid is "an ester of tartaric acid, a carboxylic acid with additional oxygen function", of subheading 2918.13.50, HTSUS. Lab report #2-2000-20665-001, dated March 23, 2000, concluded that (-)-Dibenzoyl-L-tartaric acid anhydrous is also an

ester of tartaric acid of subheading 2918.13.50, HTSUS.

Issue:

Whether (+)-DI-O-P-Toluoyl-D-Tartaric Acid, (-)-Dibenzoyl-L-tartaric acid anhydrous, and Dibenzoyl-D-tartaric acid are classified in subheading 2918.13.50, HTSUS, as esters of tartaric acid, or in subheading 2918.19.20, HTSUS, as other aromatic carboxylic acid.

Law and Analysis:

Merchandise imported into the U.S. is classified under the HTSUS. Tariff classification is governed by the principles set forth in the General Rules of Interpretation (GRIs) and, in the absence of special language or context that requires otherwise, by the Additional U.S. Rules of Interpretation. The GRIs and the Additional U.S. Rules of Interpretation are part of the HTSUS and are to be considered statutory provisions of law.

GRI 1 requires that classification be determined first according to the terms of the headings of the tariff schedule and any relative section or chapter notes and, unless otherwise required, according to the remaining GRIs taken in order. GRI 6 requires that the classification of goods in the subheadings of headings shall be determined according to the terms of those subheadings, any related subheading notes and mutatis mutandis, to the GRIs. In interpreting the HTSUS, the Explanatory Notes (ENs) of the Harmonized Commodity Description and Coding System may be utilized. The ENs, although not dispositive or legally binding, provide a commentary on the scope of each heading, and are generally indicative of the proper interpretation of the HTSUSA. See T.D. 89-80, 54 Fed. Reg. 35127 (August 23, 1989).

Only heading 2918, HTSUS, is under consideration as there is no dispute that the goods are specifically described therein. Using GRI 6, the following subheadings are relevant to the classification of this product:

2918 Carboxylic acids with additional oxygen function and their anhydrides, halides, peroxides and peroxyacids; their halogenated, sulfonated, nitrated or nitrosated derivatives:

Carboxylic acids with alcohol function but without other oxygen function, their anhydrides, halides, peroxides, peroxyacids and their derivatives:

2918.13 Salts and esters of tartaric acid:

2918.13.50 Other: [than Potassium antimony tartrate (Tartar emetic), Potassium bitartrate (Cream of tartar), and Potassium sodium tartrate (Rochelle salts)].

* * * * * * * * * * * *

2918.19 Other: [than Lactic acid, its salts and ester, Tartaric acid, Salts and esters of tartaric acid, Citric acid, Salts and esters of citric acid, Gluconic acid, its salts and esters, Phenylglycolic acid (mandelic acid), its salts and esters]

Aromatic:

Other: [than Benzilic acid and Benzilic acid, methyl ester]

2918.19.20 Products described in additional U.S. note 3 to section VI

The Chapter Notes to Chapter 29 state in pertinent part:

5(a) The esters of acid-function organic compounds of subchapters I to VII with

organic compounds of these subchapters are to be classified with that compound which is classified in the heading placed last in numerical order in these subchapters.

An ester is created when an acid reacts with an alcohol. Tartaric acid contains both an acid and alcohol functional group. To create (+)-DI-O-P-Toluoyl-D-Tartaric Acid, toluic acid reacts with the alcohol functional group of tartaric acid. Toluic acid is classifiable in heading 2916, HTSUS. Tartaric acid is classifiable in heading 2918, HTSUS. By application of Chapter note 5(a), the ester is classifiable in the later heading. An ester of tartaric acid may use either the acid or alcohol functional group to create the ester. Lab.report 2-97-21360-001 seems to indicate that because the ester used the alcohol rather than the acid functional group of tartaric acid, it was not an "ester of tartaric acid", classifiable in subheading 2918.13, HTSUS, but rather an "other ester of an aromatic polycarboxylic acid" of subheading 2918.19, HTSUS.

This statement is incorrect. Esters of tartaric acid can be created through a reaction using the alcohol functional group of tartaric acid. Esters of tartaric acid are eo nomine provided for in subheading 2918.13, HTSUS. Stated another way, by application of GRI 6, the goods are more specifically provided for in subheading 2918.13 than in subheading 2918.19, HTSUS.

Therefore, (+)-Di-p-toluoyl-l-tartaric acid (CAS #32634-68-7) was correctly classified in NY B83470, in subheading 2918.13.50, HTSUS, the provision for "[C]arboxylic acids with alcohol function but without other oxygen function, their anhydrides, halides, peroxides, peroxyacids and their derivatives: [S]alts and esters of tartaric acid: [O]ther." HQ 960536 should have followed the ruling in NY B83470 in classifying (+)-DI-O-P-Toluoyl-D-Tartaric Acid. Similarly, (-)-Dibenzoyl-L-tartaric acid anhydrous and Dibenzoyl-D-tartaric acid are also esters of tartaric acid.

Holding:

(+)-DI-O-P-Toluoyl-D-Tartaric Acid (CAS #32634-68-7), (-)-Dibenzoyl-L-tartaric acid anhydrous (CAS #2743-38-6), and Dibenzoyl-D-tartaric acid (CAS #1706-42-5) are classified in subheading 2918.13.50, HTSUS, as esters of tartaric acid.

Effect on Other Rulings:

HQ 960536 is revoked.

JOHN DURANT,
Director,
Commercial Rulings Division

---

19 CFR PART 177

REVOCATION OF RULING LETTER AND TREATMENT RELATING TO TARIFF CLASSIFICATION OF TELECOMMUNICATIONS RECEIVER AND TRANSMITTER

AGENCY: U.S. Customs Service, Department of the Treasury

ACTION: Notice of revocation of ruling letter and revocation of treatment relating to tariff classification of a telecommunications receiver and transmitter.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930, as amended, (19 U.S.C. 1625(c)), this notice advises interested parties that Customs intends to revoke a ruling letter pertaining to the tariff classification of a telecommunications receiver and transmitter under the Harmonized Tariff Schedule of the United States (HTSUS), and revoke any treatment previously accorded by Customs to substantially identical transactions. Notice of the proposed revocation was published in the Customs Bulletin of September 20, 2000, Volume 34, Number 38. One comment was received.

EFFECTIVE DATE: Merchandise entered or withdrawn from warehouse for consumption on or after January 8, 2001.

FOR FURTHER INFORMATION CONTACT: Gail A. Hamill, General Classification Branch, (202) 927-1172.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI, (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are **"informed compliance"** and **"shared responsibility."** These concepts are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's responsibilities and rights under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended, (19 U.S.C. 1484) the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930, as amended, (19 U.S.C. 1625(c)(1)), a notice was published on September 20, 2000, in the *Customs Bulletin*, Volume 34, Number 38, proposing to revoke NY ruling 816354, dated December 27, 1995, pertaining to the tariff classification of a telecommunications receiver and transmitter. One comment, in opposition to the revocation, was received in response to this notice. However, the views expressed in the comment were unpersuasive.

As stated in the proposed notice, this revocation will cover any rulings on this merchandise which may exist but have not been specifi-

cally identified. Any party who has received an interpretive ruling or decision (*i.e.*, ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice, should have advised Customs during this comment period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930, as amended, (19 U.S.C. 1625(c)(2)), Customs is revoking any treatment previously accorded by Customs to substantially identical transactions. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or Customs previous interpretation of the Harmonized Tariff Schedule of the United States (HTSUS). Any person involved in substantially identical transactions should have advised Customs during this notice period. An importer's failure to advise Customs of substantially identical transactions or of a specific ruling not identified in this notice, may raise a rebuttable presumption of a lack of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of this final action.

Pursuant to 19 U.S.C. 1625 (c)(1), Customs is revoking NY 816354, dated December 27, 1995, and any other ruling not specifically identified, in order to classify this telecommunications receiver and transmitter in subheading 8517.50.50, HTSUS, as other apparatus for carrier-current line systems or for digital line systems, other, telephonic. Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs is revoking any treatment previously accorded by the Customs Service to substantially identical transactions. HQ 962957, revoking NY D816354, is set forth as the Attachment to this document.

In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after publication in the Customs Bulletin.

Dated: October 23, 2000

MARVIN AMERNICK
(for John Durant, Director,
Commercial Rulings Division)

[Attachment]

[ATTACHMENT A]

October 23, 2000
CLA-2 RR:CR:GC 962957 gah
Category: Classification
Tariff No.: 8517.50.50

MS. MARY E. GILL
CORPORATE COUNSEL
LUCENT TECHNOLOGIES
P.O Box 20046
Room GC-C3A23
Greensboro, NC 27420-0046

Re: Revocation of NY 816354; telecommunications receiver and transmitter.

DEAR MS. GILL:

This is in regards to a New York (NY) ruling 816354, issued to you on December 27, 1995, concerning the classification, under the Harmonized Tariff Schedule of the United States (HTSUS), of a 1227-type Astrotec lightwave receiver and a 1310-type Astrotec lightwave transmitter. We have reviewed this ruling and have determined that it is incorrect. Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1), as amended by section 623 of Title VI, a notice was published on September 20, 2000, in the Customs Bulletin, Volume 34, number 38, proposing to revoke NY 816354. One comment was received in response to this notice.

Therefore, this ruling revokes NY 816354 and sets forth the correct classification for the telecommunications receiver and transmitter.

Facts:

The merchandise was described by AT&T in 1995 as a 1310-type Astrotec lightwave receiver, which translates optical signals into electrical signals, and a 1227-type Astrotec lightwave transmitter, which translates electrical signals to optical signals. These devices are put in pairs on fiber optic cable and are used in communications networks.

The 1310-type receiver contains a hybrid integrated circuit (HIC) with a silicon or gallium arsenide preamplifier, a silicon bipolar comparator, an indium gallium arsenide photo detector, all assembled together and attached to a fiber optic pigtail connector.

The 1227-type transmitter contains a hybrid integrated circuit, resistors, a CMOS integrated circuit and an indium gallium arsenide phosphide laser module. The laser module within the 1227-type device generates the optical signal and contains a laser diode and a photo diode. The photo diode acts as a back face monitor for the laser, adjusting the emissions from the laser to generate a uniform transmission. The HIC directs the conversion of the electrical signals by the laser module for generation into optical signals. All of the elements are assembled together and attached to a fiber optic pigtail connector.

In NY 816354 the receiver and transmitter were determined to be classifiable in subheading 8541.40.60 and 8541.40.95, respectively.

Issue:

Are the receiver and transmitter classifiable in heading 8517 as electrical apparatus for digital line telephony or heading 8541 as photosensitive semiconductor devices assembled in modules?

Law and Analysis:

Classification of merchandise under the Harmonized Tariff Schedule of the United States (HTSUS) is in accordance with the General Rules of Interpretation (GRI). GRI 1 provides that classification shall be determined according to the

terms of the headings and any relative section or chapter notes. Merchandise that cannot be classified in accordance with GRI 1 is to be classified in accordance with subsequent GRIs.

The Harmonized Commodity Description and Coding System Explanatory Notes (EN) constitute the official interpretation of the Harmonized System at the international level. While neither legally binding nor dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. *See* T.D. 89-80, 54 FR 35127, 35128 (August 23, 1989).

Heading 8541 covers **diodes, transistors and similar semiconductor devices; photosensitive semiconductor devices, including photovoltaic cells whether or not assembled in modules or made up into panels; light-emitting diodes;** mounted piezoelectric crystals; parts thereof. This heading contains five groups of goods separated by semi-colons. The first three groups, highlighted in bold, contain goods which are part of the receiver or the transmitter at issue. For ease of reference, we will refer to diodes, transistors and similar semiconductor devices as group 1. Group 2 will be photosensitive semiconductor devices, and group 3 will be light-emitting diodes.

The receiver includes a HIC, a silicon or gallium arsenide preamplifier, a silicon bipolar comparator, and an indium gallium arsenide photo detector. These components are classified in group 1 and group 2 of heading 8541, and heading 8542. The transmitter includes resistors (heading 8533), a HIC and a CMOS integrated circuit (heading 8542), and an indium gallium arsenide phosphide laser module, which contains a laser diode (group 3) and a photo diode (group 2). Thus, the receiver is a device assembled from the goods of the first two groups and heading 8542, while the transmitter is a device assembled of the goods of groups 2 and 3, heading 8533 and heading 8542.

Each of the groups of devices separated by semicolons in the heading text has distinct electronic properties. Group 2, photovoltaic cells, may be classified in heading 8541, even when they are in module or panel form. In the instant case, both the receiver and the transmitter contain a photodiode, a type of photovoltaic cell, in module form. However, these modules also contain devices of other groups within heading 8541, heading 8533 and heading 8542. EN(B)(2)(i) to the heading restates that photovoltaic cells in module form remain within the heading. It further indicates the limitations of modules and panels of this heading by an example. That example is of a solar cell (group 2) combined with a diode (group 1). When the two are combined, the light collected from the solar cell is transmitted by the diode to a motor. That combination of devices is excluded from heading 8541, and included in heading 8501. EN(B)(2)(i). The diode, in this example, does not contribute to the functioning of the solar cell. It has its own function, which is to control the direction of the current flow from the solar cell to the motor.

EN(B)(2)(iii) is also instructive on the issue of what types of modules are included in heading 8541. This EN covers photocouples and photorelays. In these devices the photovoltaic cell is coupled to an electroluminescent diode. However, these modules can be distinguished from the aforementioned type of module in that the semiconductors are coupled together for a single purpose or function. That function is the transmission of an electrical signal by the action of light on a photosensitive semiconductor.

Although *ABB Power Transmission v. U.S.*, 19 CIT 1044 (1995), deals with thyristors modules classified in group 1, it is instructive on the issue of modules that are classifiable in heading 8541. The Court stated that "...the principal and sole function of a thyristor module is imparted by the thyristors acting in unison...".

The ENs and ABB Power interprets the legal text of *whether or not assembled in modules or made up into panels*. We interpret it to apply to all photovoltaic cells that are in module or panel form. We interpret the legal text to not include combinations of goods from two or more distinct groups enumerated in heading 8541, or combinations of goods of heading 8541 and another heading, when the combination of goods do not contribute to a single function covered by a single group enumerated in heading 8541. Thus, the instant receiver and transmitter

are excluded from classification in heading 8541.

Note 5(a) to chapter 85 defines diodes, transistors and similar semiconductor devices as semiconductor devices the operation of which depends on variations in resistivity on the application of an electric field. These devices are classified in heading 8541 if they meet the definition of note 5(a) even if they are also described by another heading. Note 5(a) does not extend to other groups of goods classified in heading 8541, such as photosensitive devices and light emitting diodes. This is further indication that the groups of goods enumerated in the heading 8541 text are considered distinct from each other.

Both the receiver and the transmitter contain goods which are not described in the 8541 heading text. The receiver contains a hybrid integrated circuit (heading 8542). The transmitter contains a hybrid integrated circuit (heading 8542) and resistors (heading 8533). The HICs have been likened to the "brain" of the transmitter and receiver. Their function includes the amplification of the electrical signal, filtering, regeneration of the electrical signal, modulation, power control, etc. These additional goods expand the functions of the 8541 enumerated goods. Heading 8541 does not specifically describe either the entire receiver or the entire transmitter.

We have considered our view in light of the decision in *ABB Power Transmission v. U.S.*, *supra*, in which thyristor modules (group 1) were classified as similar semiconductor devices of note 5(a) to chapter 85. The thyristor modules contained other circuitry, but the court found that the other circuitry served the same function as the thyristors, that of directing the flow of electric current. The instant transmitter and receiver function to direct, generate, amplify, and convert electrical and optical signals.

The 1310-type Astrotec lightwave receiver is designed for use in transmission systems or medium to high-speed data communication applications, that is, intra office or intermediate-reach applications. It converts a light pulse signal to electrical signals. The device contains a preamplifier which begins the amplification process by taking the current from the photodiode and boosting it. The output is fed to a voltage comparator which produces a clean digital output signal. The hybrid integrated circuit processes the signal further.

The 1227-type Astrotec lightwave transmitter is designed for use with the above receiver in the same applications. It converts an electrical signal into a light pulse signal to be put on fiber optic cable which is connected to a communication network. The HIC directs the conversion of the electrical signals by the laser module for generation into optical signals. It modulates the electrical signal. The optical signal is generated by the laser diode, monitored by the photodiode, and sent to the fiber optic pigtail for transmission to cable. Laser diodes also require additional circuitry to achieve acceptable stability in diverse temperatures.

Heading 8517 covers electrical apparatus for line telephony or line telegraphy... and telecommunication apparatus for carrier-current line systems or for digital line systems; videophones. Telecommunications apparatus for carrier-current or digital line systems, by reference to the heading's EN(III), are based on the modulation of electrical carrier-current or of a light beam by analogue or digital signals. Use is made of a variety of modulation techniques. These apparatus for line systems transmit words, data and images in a digital or analog form. Line equipment includes transmitters and receivers or electro-optical converters, and combined modulators-demodulators (modems). Thus, the EN to heading 8517 specifies transmitters and receivers as complete line apparatus within the scope of the heading text.

Receivers and transmitters are devices which are defined as accepting signals and generating signals, respectively. A. Freedman, *The Computer Glossary* 440, 552 (Sixth Ed. 1993). The instant goods meet these definitions and are commercially known as receivers and transmitters for use in telecommunications systems. Alternatively, the EN includes in line equipment electro-optical converters, the function of the instant goods.

Subheading 8517.50 covers other apparatus, for carrier-current line systems or for digital line systems. The goods are specifically described at GRI 1 as other

telephonic apparatus for line systems, in subheading 8517.50.50, HTSUS.

Holding:

The 1310-type Astrotec lightwave receiver and 1227-type Astrotec lightwave transmitter are classified in subheading 8517.50.50, HTSUS, which provides for electrical apparatus for line telephony or line telegraphy..., other apparatus, for carrier-current line systems or for digital line systems, other, telephonic.

In accordance with 19 U.S.C. 1625(c)(1), this ruling will become effective 60 days after its publication in the Customs Bulletin.

MARVIN AMERNICK
(for John Durant, Director,
Commercial Rulings Division)

---

19 CFR PART 177

MODIFICATION OF RULING LETTER AND REVOCATION OF TREATMENT RELATING TO COUNTRY OF ORIGIN MARKING OF CERTAIN WRISTWATCHES

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of modification of ruling letter and revocation of treatment relating to the country of origin marking of certain wristwatches.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 [19 U.S.C. 1625(c)], as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that Customs is modifying a ruling pertaining to the country of origin marking of certain wristwatches and revoking any treatment previously accorded by Customs to substantially identical transactions. Notice of the proposed modification was published in the *Customs Bulletin* of August 30, 2000, Vol. 34, No. 35.
One comment was received in favor of the change.

EFFECTIVE DATE: Merchandise entered or withdrawn from warehouse for consumption on or after January 8, 2001.

FOR FURTHER INFORMATION CONTACT: Richard Romero, Special Classification and Marking Branch at (202) 927-3648.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI, (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub.L. 103-182, 107 Stat. 2057) (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are **"informed compliance"** and **"shared responsibility."** These concepts are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's responsibilities and rights under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended, (19 U.S.C. §1484) the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to Customs obligations, a notice of proposed modification of New York Ruling Letter (NY) F86132 dated May 17, 2000, was published in the *Customs Bulletin* on August 30, 2000, Vol. 34, No. 35. One comment was received in favor of the change.

In NY F86132, Customs ruled that the presence of the British flag on the face and clasp of wristwatches of Chinese origin may mislead or deceive the ultimate purchaser of the watches as to the actual origin of the product. Therefore, it was determined that the special marking requirements of section 134.46, Customs Regulations 19 CFR 134.46, are triggered. Since the issuance of that ruling, Customs has determined that the marking decision is in error. It is now Customs view that the Union Jack is not likely to cause the ultimate purchaser to conclude that the wristwatches are products of the United Kingdom. For this reason, in this instance we conclude that the Union Jack does not trigger the requirements of 19 CFR 134.46. Pursuant to 19 U.S.C. 1625(c)(1), Customs is modifying NY F86132 to reflect that the presence of the Union Jack on the watch face and clasp does not trigger 19 CFR 134.46 pursuant to the analysis set forth in Headquarters Ruling 561767, which is set forth as the "Attachment" to this document. The portion of NY F86132 pertaining to the requirements of Chapter 91, Additional U.S. Note 4, HTSUS, concerning marking of watch movements and cases remains intact. Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs is revoking any treatment previously accorded by the Customs Service to substantially identical transactions.

As stated in the proposed notice, this modification will cover any

rulings on this issue which may exist but have not been specifically identified. Any party who has received an interpretive ruling or decision (*i.e.*, ruling letter, internal advice memorandum or decision or protest review decision) on the issue subject to this notice, should have advised Customs during the notice period. Similarly, pursuant to section 625(c)(2), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)(2)), Customs is revoking any treatment previously accorded by Customs to substantially identical transactions. This treatment may, among other reasons, have been the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations involving the same or similar merchandise, or the importer's or Customs previous interpretation of the Harmonized Tariff Schedule of the United States. Any person involved in substantially identical transactions should have advised Customs during the notice period. An importer's reliance on a treatment of substantially identical transactions or on a specific ruling concerning the merchandise covered by this notice which was not identified in this notice may raise the rebuttable presumption of lack of reasonable care on the part of the importer or its agents for importations subsequent to the effective date of this final decision.

Dated: October 24, 2000

MYLES HARMON
(for John Durant, Director,
Commercial Rulings Division)

[Attachment]

[ATTACHMENT A]

October 24, 2000
RR:CR:SC 561767 RTR
Category: Marking

JOHN B. PELLEGRINI, ESQ.
ROSS & HARDIES
Park Avenue Tower
65 East 55th Street
New York, New York 10022-3219

Re: Country of Origin Marking, Wristwatch; Union Jack Flag; 19 CFR 134.46.

DEAR MR. PELLEGRINI:

This is in reference to your letter dated June 5, 2000, to the Director, Commercial Rulings Division, Office of Regulations & Rulings, on behalf of your client, Reebok International, Ltd., in which you request review of NY F86132, dated May 17, 2000. Specifically, you question Customs application of 19 CFR §134.46 to the

Union Jack insignia on wristwatches your client intends to import. Our response follows.

Pursuant to section 625(c), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)), notice of the proposed modification of NY F86132 was published in the Customs Bulletin on August 30, 2000, Volume 34, Number 35. One comment was received in favor of the change.

Facts:

According to your letter, your client will import a watch manufactured in the People's Republic of China. The watch has a quartz movement, an analog display and a leather band with a fabric lining and a metal clasp. The Union Jack is imprinted on the analog display, and is embossed on the clasp. The country of origin of the watch is indicated by a sticker that is applied to the back of the case.

On May 1, 2000, you requested a ruling from Customs on the marking of the watch described above, and on May 17, 2000 Customs issued NY F86132 in response. It was determined that the presence of the Union Jack on the clasp and watch face triggered 19 C.F.R. §134.46 because it may mislead or deceive the ultimate purchaser as to the actual origin of the product. On June 6, 2000, Customs received your request for administrative review.

Issue:

Whether 19 C.F.R. §134.46 is triggered by the presence of an insignia or symbol on an article that is commonly associated with a country different from the actual country of origin of the article.

Law and Analysis:

19 CFR §134.46 addresses marking when the name of a country or locality other than country of origin appears on an article. It provides:

> In any case in which the words "United States," or "American," the letters "U.S.A.," any variation of such words or letters, or the name of any city or location in the United States, or the name of any foreign country or locality other than the country or locality in which the article was manufactured or produced appear on an imported article or its container, and those words, letters or names may mislead or deceive the ultimate purchaser as to the actual country of origin of the article, there shall appear legibly and permanently in close proximity to such words, letters or name, and in at least a comparable size, the name of the country of origin preceded by "Made in," "Product of," or other words of similar meaning.

Section 304 of the Tariff Act of 1930, as amended (19 U.S.C. §1304), provides that, unless excepted, every article of foreign origin imported into the U.S. shall be marked in a conspicuous place as legibly, indelibly, and permanently as the nature of the article (or container) will permit, in such a manner as to indicate to the ultimate purchaser in the U.S. the English name of the country of origin of the article. When it enacted 19 U.S.C. §1304, Congress intended that the ultimate purchaser should be able to determine by an inspection of the marking on the imported goods the country of origin. Part 134, Customs Regulations (19 CFR Part 134), implements the country of origin marking requirements and exceptions to 19 U.S.C. §1304.

In order to protect the ultimate purchaser of a good from being mislead with regard to the country of origin of an imported article, 19 CFR §134.46 provides that in any case in which words may mislead or deceive the ultimate purchaser as to the actual country of origin, the name of the actual country of origin preceded by "Made in," "Product of," *etc.*, must be inscribed in close proximity to the geographical reference.

Under Customs Regulation §134.46, the inquiry is whether or not the Union Jack on your client's watches could reasonably confuse the ultimate purchaser as to their country of origin.

Customs has held that, under certain conditions, non-origin geographical references appearing on imported articles do not trigger the requirements of 19 CFR §134.46 if the context in which the symbols are used is such that confusion by the ultimate purchaser regarding country of origin is unlikely. See the following Headquarters Ruling Letters (HQ) for examples of words and symbols that did not trigger the special marking requirements of 19 CFR 134.46: HQ 561213 (February 16, 1999), concerning a patch sewn into the tongue of a shoe bearing the famous likeness of World War II U.S. Marines raising the U.S. flag at Iwo Jima; HQ 734783 (April 30, 1993), concerning the non-origin country flags and color references printed on soccer balls; HQ 733695 (January 15, 1991), concerning women's trousers with metal rivets die-stamped with the words "Bonjour Paris" and with a fabric label sewn into the waistband indicating the country of origin as Hong Kong; HQ 733259 (August 3, 1990), concerning patches respectively indicating "St. Moritz", "Tahiti", "Rome", and "Alaska" sewn onto the front of a child's pullover knit top; and HQ 732412 (August 29, 1989), concerning the words "Kansas" and "Kansas Jeans Navy Wear" on blue-jean pants.

Insofar as the Union Jack at issue here is employed as part of the trade dress of your client's product, it is analogous to the merchandise addressed in the foregoing rulings. That is, the decorative context in which it is used is not likely to cause the ultimate purchaser to conclude that the wristwatches are the products of the United Kingdom. For this reason, in this instance we conclude that the Union Jack does not trigger the requirements of 19 CFR 134.46.

Holding:

NY F86132 is modified to reflect that the presence of the Union Jack on the watch face and clasp does not trigger 19 CFR 134.46. The portion of NY F86132 pertaining to the requirements of Additional U.S. Note 4, Chapter 91, HTSUS, concerning marking of watch movements and cases remains intact. Identifying the country of origin by means of a paper sticker applied to the back of the watch case is not in accordance with the requirements of Additional U.S. Note 4.

A copy of this ruling letter should be attached to the entry documents filed at the time the goods are entered. If the documents have been filed without a copy, this ruling should be brought to the attention of the Customs officer handling the transaction.

In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after its publication in the Customs Bulletin.

MYLES HARMON
(for John Durant, Director,
Commercial Rulings Division)

United States Court of International Trade

One Federal Plaza
New York, N.Y. 10278

Chief Judge

Gregory W. Carman

Judges

Jane A. Restani
Thomas J. Anquilino, Jr.
Richard W. Goldberg
Donald C. Payne
Evan J. Wallach
Judith M. Barzilay
Delissa Ann Ridgway

Senior Judges

James L. Watson
Hebert N. Maletz
Nicholas Tsoucalas
R. Kenton Musgrave

Clerk

Leo M. Gordon

NOTICE OF AMENDMENTS TO THE RULES OF THE UNITED STATES COURT OF INTERNATIONAL TRADE

This is to inform you that, on August 29, 2000, the Court approved certain amendments to the Rules of the United States Court of International Trade that *will become effective on January 1, 2001*. The Amendments resulted in changes being made to the following: USCIT Rules Preface; Rules 3, 4, 16, 24, 26, 27, 28, 29, 30, 31, 32, 33, 34, 36, 37, 40, 53, 75, 79, 82, 84, 89; Specific Instructions to Forms 3 and 5; Appendix on Access to BPI; and creation of a new Form 19.

In addition, the Court amended certain provisions (Title Page; Rules 1, 2, 6, 17, 21; and Complaint Form) of the Rules Governing Complaints of Judicial Misconduct or Disability that also *will become effective on January 1, 2001*.

The language that has been deleted appears in brackets with strikeovers. The language that has been added appears in redline type.

A copy of the amendments may be obtained from the Court's website at:

www.uscit.gov

October 2, 2000

LEO M. GORDON
Clerk of the Court

Index

Customs Bulletin and Decisions
Vol. 34, No. 45, November 8, 2000

U.S. Customs Service

Treasury Decision

General Notices

Office of Regulations & Rulings

U.S. Court of International Trade

Federal Recycling Program
Printed on Recycled Paper
U.S.G.P.O. 2000-472-776-20005